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recruiting incentive to a particular candidate.

§ 572.103 Recordkeeping.

Each agency will maintain records of payments made under this authority and will make those records available to OPM on request.

PART 575—RECRUITMENT, RELOCATION, AND RETENTION INCENTIVES; SUPERVISORY DIFFERENTIALS; AND EXTENDED ASSIGNMENT INCENTIVES

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SOURCE: 56 FR 12838, Mar. 28, 1991, unless otherwise noted.

Subpart A—Recruitment Incentives

SOURCE: 70 FR 25740, May 13, 2005, unless otherwise noted.

§ 575.101 Purpose.

This subpart contains regulations implementing 5 U.S.C. 5753, which authorizes payment of recruitment incentives. An agency may pay a recruitment incentive to a newly appointed employee under the conditions specified in this subpart provided the agency has determined that the employee's position is likely to be difficult to fill in the absence of an incentive.

§ 575.102 Definitions.

In this subpart:

Agency means an executive agency or a legislative branch agency included in 5 U.S.C. 5102(a)(1).

Authorized agency official means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

Competencies means the knowledge, skills, abilities, behaviors, and other characteristics an individual needs to perform the duties of a position.

Employee has the meaning given that term in 5 U.S.C. 2105, except that the term also includes an employee described in 5 U.S.C. 2105(c). An *employee* also means an individual not yet employed who has received a written offer to be newly appointed or reappointed and has signed the written service agreement required by § 575.110 before payment of the recruitment incentive.

Employee of the Federal Government means an employee (as that term is defined in 5 U.S.C. 2105, except that the term also includes an employee described in 5 U.S.C. 2105(c) and (e)) of any part of the Government of the United States (which includes the United States Postal Service and the Postal Rate Commission).

Executive agency has the meaning given that term in 5 U.S.C. 105.

Newly appointed refers to—

(1) The first appointment, regardless of tenure, as an employee of the Federal Government;

(2) An appointment as a former employee of the Federal Government following a break in service of at least 90 days; or

(3) An appointment as an employee of the Federal Government when the employee's Federal service during the 90-day period immediately preceding the appointment was limited to one or more of the following:

(i) A time-limited or non-permanent appointment in the competitive or excepted service;

(ii) Employment with the government of the District of Columbia (DC) when the candidate was first appointed by the DC government on or after October 1, 1987;

(iii) An appointment as an expert or consultant under 5 U.S.C. 3109 and 5 CFR part 304;

(iv) Service as an employee of a non-appropriated fund instrumentality (NAFI) of the Department of Defense (when moving from a Department of Defense NAFI position to another Department of Defense position) or the Coast Guard (when moving from a Coast Guard NAFI position to another Coast Guard position) if the individual has a break in service of more than 3 days from the nonappropriated fund instrumentality;

(v) Service as an employee of a non-appropriated fund instrumentality of the Department of Defense when moving to a position outside of the Department of Defense or of the Coast Guard when moving to a position outside the Coast Guard; or

(vi) Employment under a provisional appointment designated under 5 CFR 316.403.

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OPM means the Office of Personnel Management.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which an employee is or will be appointed before deductions and including any special rate under 5 CFR part 530, subpart C, or similar payment under other legal authority, and any locality-based comparability payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excluding additional pay of any other kind. For example, a *rate of basic pay* does not include additional pay such as night shift differentials under 5 U.S.C. 5343(f) or environmental differentials under 5 U.S.C. 5343(c)(4).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment of not less than 6 months or more than 4 years with the agency in return for payment of a recruitment incentive.

EFFECTIVE DATE NOTE: At 72 FR 67837, Dec. 3, 2007, § 575.102 was amended by revising the definition of *employee*; removing the definition of *employee of the Federal Government*; adding a new definition of *Federal Government*; and revising paragraphs (2) and (3) in the definition of *newly appointed*, effective Jan. 2, 2008. For the convenience of the user, the added and revised text is set forth as follows:

§ 575.102 Definitions.

Employee has the meaning given that term in 5 U.S.C. 2105, except that the term also includes an employee described in 5 U.S.C. 2105(c). For the purpose of determining whether an individual was an employee of the Federal Government during the 90-day period referred to in the definition of *newly appointed*, *employee* also includes an employee described in 5 U.S.C. 2105(e). For the purpose of § 575.109(d), an *employee* means an individual not yet employed who has received a written offer to be newly appointed or reappointed and has signed the written service agreement required by § 575.110 before payment of the recruitment incentive.

Federal Government means all entities of the Government of the United States, includ-

ing the United States Postal Service and the Postal Regulatory Commission.

* * * * *

Newly appointed refers to—* * *

(2) An appointment of a former employee of the Federal Government following a break in Federal Government service of at least 90 days; or

(3) An appointment of an individual in the Federal Government when his or her service in the Federal Government during the 90-day period immediately preceding the appointment was limited to one or more of the following:

(i) A time-limited appointment in the competitive or excepted service;

(ii) A non-permanent appointment (excluding a Schedule C appointment under 5 CFR part 213) in the competitive or excepted service;

(iii) Employment with the government of the District of Columbia (DC) when the candidate was first appointed by the DC government on or after October 1, 1987;

(iv) An appointment as an expert or consultant under 5 U.S.C. 3109 and 5 CFR part 304;

(v) Employment under a provisional appointment designated under 5 CFR 316.403; or

(vi) Employment under the Student Career Experience Program under 5 CFR 213.3202(b).

* * * * *

§ 575.103 Eligible categories of employees.

Except as provided in § 575.104, an agency may pay a recruitment incentive to an employee appointed or placed in the following categories of positions:

(a) A General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority);

(b) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(c) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(d) A position as a law enforcement officer, as defined in 5 CFR 550.103;

(e) A position under the Executive Schedule paid under 5 U.S.C. 5311–5317 or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(f) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3); or

(g) Any other position in a category for which payment of recruitment incentives has been approved by OPM at the request of the head of an executive agency.

EFFECTIVE DATE NOTE: At 72 FR 67837, Dec. 3, 2007, § 575.103 was amended by redesignating paragraphs (a) through (g) as paragraphs (a)(1) through (a)(7), respectively; designating the introductory sentence as paragraph (a) introductory text and revising it; and adding a new paragraph (b), effective Jan. 2, 2008. For the convenience of the user, the added and revised text is set forth as follows:

§ 575.103 Eligible categories of employees.

(a) Except as provided in § 575.104, an Executive agency may pay a recruitment incentive to an employee appointed or placed in the following categories of positions:

* * * * *

(b) Except as provided in § 575.104, a legislative agency may pay a recruitment incentive to an employee appointed or placed in a General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority).

§ 575.104 Ineligible categories of employees.

An agency may not pay a recruitment incentive to an employee in—

(a) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(b) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(c) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(d) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—

(1) To which an individual is appointed by the President without the advice and consent of the Senate;

(2) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(3) In which the employee is expected to receive an appointment as the head of an agency.

§ 575.105 Applicability to employees.

(a) A recruitment incentive may be paid under the conditions prescribed in this subpart to an employee who is newly appointed to a position listed in § 575.103 that is likely to be difficult to fill, as determined under § 575.106.

(b) An agency may target groups of similar positions (excluding positions covered by § 575.103(b), (c), or (e) or those in similar categories approved by OPM under § 575.103(g)) that have been difficult to fill in the past or that may be difficult to fill in the future and make the required determination to offer a recruitment incentive to newly-appointed employees on a group basis.

EFFECTIVE DATE NOTE: At 72 FR 67838, Dec. 3, 2007, § 575.105 was amended by adding a new paragraph (c), effective Jan. 2, 2008. For the convenience of the user, the added text is set forth as follows:

§ 575.105 Applicability to employees.

* * * * *

(c) An agency may not commence a recruitment incentive service agreement during—

(1) A period of employment established under any service agreement required for a relocation incentive under 5 CFR part 575, subpart B, or

(2) A period of employment established under any service agreement required for a retention incentive or for which an employee receives retention incentive payments without a service agreement under 5 CFR part 575, subpart C.

§ 575.106 Authorizing a recruitment incentive.

(a) *Authority of authorized agency official.* An authorized agency official retains sole and exclusive discretion, subject only to OPM review and oversight, to—

(1) Determine when a position is likely to be difficult to fill under paragraph (b) of this section;

(2) Approve a recruitment incentive for an employee under § 575.105;

(3) Establish the criteria for determining the amount of a recruitment incentive and the length of a service period under §§ 575.109(a) and 575.110(a), respectively;

(4) Request a waiver from OPM of the limitation on the maximum amount of

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a recruitment incentive under § 575.109(c); and

(5) Establish the criteria for terminating a service agreement under § 575.111.

(b) *Factors for determining when a position is likely to be difficult to fill.* An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may determine that a position is likely to be difficult to fill if the agency is likely to have difficulty recruiting candidates with the competencies required for the position (or group of positions) in the absence of a recruitment incentive. An agency must consider the following factors, as applicable to the case at hand, in determining whether a position (or group of positions) is likely to be difficult to fill in the absence of a recruitment incentive and in documenting this determination as required by § 575.108:

(1) The availability and quality of candidates possessing the competencies required for the position, including the success of recent efforts to recruit candidates for similar positions using indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

(2) The salaries typically paid outside the Federal Government for similar positions;

(3) Recent turnover in similar positions;

(4) Employment trends and labor-market factors that may affect the agency's ability to recruit candidates for similar positions;

(5) Special or unique competencies required for the position;

(6) Agency efforts to use non-pay authorities, such as special training and work scheduling flexibilities, to resolve difficulties alone or in combination with a recruitment incentive;

(7) The desirability of the duties, work or organizational environment, or geographic location of the position; and

(8) Other supporting factors.

(c) An agency may determine that a position (or group of positions) is likely to be difficult to fill if OPM has approved the use of a direct-hire authority applicable to the position (or group

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of positions) under 5 CFR part 337, subpart B.

EFFECTIVE DATE NOTE: At 72 FR 67838, Dec. 3, 2007, § 575.106 was amended by revising paragraph (b)(1), effective Jan. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

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* * * * *

(b) * * *

(1) The availability and quality of candidates possessing the competencies required for the position, including the success of recent efforts to recruit candidates for the position or similar positions using indicators such as offer acceptance rates, proportion of positions filled, and the length of time required to fill similar positions;

* * * * *

§ 575.107 Agency recruitment incentive plan and approval levels.

(a) Before paying recruitment incentives under this subpart, an agency must establish a recruitment incentive plan. The plan must include the following elements:

(1) The designation of officials with authority to review and approve payment of recruitment incentives (subject to paragraph (b) of this section), including the circumstances under which an official has the authority to approve payment without higher level approval under paragraph (b)(2) of this section;

(2) The categories of employees who are prohibited from receiving recruitment incentives;

(3) Required documentation for determining that a position is likely to be difficult to fill;

(4) Any requirements for determining the amount of a recruitment incentive;

(5) The payment methods that may be authorized;

(6) Requirements governing service agreements, which, at a minimum, must include—

(i) The criteria for determining the length of a service period;

(ii) The conditions for terminating a service agreement; and

(iii) The obligations of the agency and the employee, as applicable, if an

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agency terminates a service agreement; and

(7) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action and to fulfill the requirements of §§ 575.112 and 575.113.

(b)(1) Except as provided in paragraph (b)(2) of this section, an authorized agency official who is at least one level higher than the employee's supervisor must review and approve each determination to pay a recruitment incentive to a newly-appointed employee, unless there is no official at a higher level in the agency.

(2) When necessary to make a timely offer of employment, an authorized agency official may establish criteria in advance for offering recruitment incentives to newly-appointed employees and may authorize an official who is not lower than a candidate's supervisor to use these criteria to offer a recruitment incentive (in any amount within a pre-established range) to a candidate without further review or approval.

(c) Unless the head of the agency determines otherwise, an agency recruitment incentive plan must apply uniformly across the agency.

EFFECTIVE DATE NOTE: At 72 FR 67838, Dec. 3, 2007, § 575.107 was amended by revising paragraphs (a)(1) and (b)(1), effective Jan. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 575.107 Agency recruitment incentive plan and approval levels.

(a) * * *

(1) The designation of officials with authority to review and approve payment of recruitment incentives (subject to paragraph (b) of this section), including the circumstances under which an official has the authority to approve payment without higher-level approval under paragraph (b)(2) of this section, and the designation of officials with authority to waive the repayment of a recruitment incentive under § 575.111(h);

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, an authorized agency official who is at least one level higher than the employee's supervisor must review and approve each determination to pay a recruitment incentive to a newly appointed employee, unless there is no official at a higher level in the agency. The authorized agency official must review and approve the recruit-

ment incentive determination before the agency may pay the incentive to the employee.

* * * * *

§ 575.108 Approval criteria and written determination.

(a) For each determination to pay a recruitment incentive under this subpart, an agency must document in writing—

(1) The basis for determining that a position is likely to be difficult to fill, as determined under § 575.106;

(2) The basis for authorizing a recruitment incentive; and

(3) The basis for the amount and timing of the approved recruitment incentive payment and the length of the required service period.

(b) An agency must make the determination to pay a recruitment incentive before the prospective employee enters on duty in the position for which recruited.

§ 575.109 Payment of recruitment incentives.

(a) An authorized agency official must establish the criteria for determining the amount of a recruitment incentive. An agency may pay a recruitment incentive—(1) As an initial lump-sum payment at the commencement of the service period required by the service agreement or before the start of the service period, as authorized by paragraph (d) of this section;

(2) In installments throughout the service period required by the service agreement;

(3) As a final lump-sum payment upon the completion of the full service period required by the service agreement; or

(4) In a combination of these payment methods.

(b)(1) Except as provided in paragraph (c) of this section, the total amount of recruitment incentive payments paid to an employee in a service period may not exceed 25 percent of the annual rate of basic pay of the employee at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years).

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(2) For hourly rate employees who do not have a scheduled annual rate of basic pay, compute the annual rate required for paragraph (b)(1) of this section by multiplying the applicable hourly rate in effect at the beginning of the service period by 2,087 hours.

(3) For the purpose of determining the number of years in a service period under paragraph (b)(1) of this section, divide the total number of calendar days in the service period by 365 and round the result to two decimal places. For example, a service period covering 39 biweekly pay periods equals 546 days, and 546 days divided by 365 days equals 1.50 years.

(c)(1) An authorized agency official may request that OPM waive the limitation in paragraph (b)(1) of this section for an employee based on a critical agency need. The authorized agency official must determine that the competencies required for the position are critical to the successful accomplishment of an important agency mission, project, or initiative (e.g., programs or projects related to a national emergency or implementing a new law or critical management initiative). Under such a waiver, the total amount of recruitment incentive payments paid to an employee in a service period may not exceed 50 percent of the annual rate of basic pay of the employee at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period. However, in no event may a waiver provide total recruitment incentive payments exceeding 100 percent of the employee's annual rate of basic pay at the beginning of the service period.

(2) Waiver requests must include—

(i) A description of the critical agency need the proposed recruitment incentive would address;

(ii) The documentation required by § 575.108;

(iii) The proposed recruitment incentive payment amount and a justification for that amount;

(iv) The timing and method of making the recruitment incentive payments;

(v) The service period required; and

(vi) Any other information pertinent to the case at hand.

(d) An agency may pay a recruitment incentive to an employee who has not yet entered on duty once the employee has signed a service agreement established under § 575.110.

(e) A recruitment incentive is not part of an employee's rate of basic pay for any purpose.

(f) Payment of a recruitment incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

§ 575.110 Service agreement requirements.

(a) Before paying a recruitment incentive, an agency must require the employee to sign a written service agreement to complete a specified period of employment with the agency (or successor agency in the event of a transfer of function). An authorized agency official must establish the criteria for determining the length of a service period. The service period may not be less than 6 months and may not exceed 4 years.

(b)(1) The service agreement must include the commencement and termination dates of the required service period. Except as provided in paragraphs (b)(2) and (b)(3) of this section, the required service period must begin upon the commencement of service with the agency. The service period must terminate on the last day of a pay period.

(2) If service with the agency does not begin on the first day of a pay period, the agency must delay the service period commencement date so that a required service period begins on the first day of the first pay period beginning on or after the commencement of service in the agency.

(3) An agency may delay a service agreement commencement date until after the employee completes an initial period of formal training or required probationary period when continued employment in the position is contingent on successful completion of the formal training or probationary period. The agency must make the determination to pay a recruitment incentive before the employee enters on duty in the position. However, the service agreement must specify that if an employee does not successfully complete the training or probationary period before

the service period commences, the agency is not obligated to pay any portion of the recruitment incentive to the employee.

(c) The service agreement must specify the total amount of the incentive, the method of paying the incentive, and the timing and amounts of each incentive payment, as established under §575.109.

(d) The service agreement must include the conditions under which the agency must terminate the service agreement (*i.e.*, if an employee is demoted or separated for cause, receives a rating of record of less than “Fully Successful” or equivalent, or otherwise fails to fulfill the terms of the service agreement) and the conditions under which the employee must repay a recruitment incentive under §575.111.

(e) The service agreement must include the conditions under which the agency may terminate the service agreement before the employee completes the agreed-upon service period. The service agreement must specify the effect of a termination under §575.111, including the conditions under which the agency will pay an additional recruitment incentive payment for partially completed service under §575.111(e) and (f).

(f) The service agreement may include any other terms or conditions that, if violated, will result in termination of the service agreement under §575.111(b). For example, the service agreement may specify the employee’s work schedule, type of position, and the duties he or she is expected to perform. In addition, the service agreement may address the extent to which periods of time on detail, in a nonpay status, or in a paid leave status are creditable towards the completion of the service period.

§575.111 Termination of a service agreement.

(a) An authorized agency official may unilaterally terminate a recruitment incentive service agreement based solely on the management needs of the agency. For example, an agency may terminate a service agreement when the employee’s position is affected by a reduction in force, when there are insufficient funds to continue the

planned incentive payments, or when the agency assigns the employee to a different position (if the different position is not within the terms of the service agreement).

(b) An authorized agency official must terminate a recruitment incentive service agreement if an employee is demoted or separated for cause (*i.e.*, for unacceptable performance or conduct), if the employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than “Fully Successful” or equivalent, or if the employee otherwise fails to fulfill the terms of the service agreement.

(c) The termination of a service agreement is not grievable or appealable.

(d) The agency must notify an employee in writing when it terminates a recruitment incentive service agreement.

(e) If an authorized agency official terminates a service agreement under paragraph (a) of this section, the employee is entitled to all recruitment incentive payments that are attributable to completed service and to retain any portion of a recruitment incentive payment he or she received that is attributable to uncompleted service.

(f) If an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain recruitment incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received recruitment incentive payments that are less than the amount that would be attributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment under the terms of the recruitment incentive service agreement. If the employee received recruitment incentive payments in excess of the amount that would be attributable to the completed portion of the service period, he or she must repay the excess amount.

(g) If an employee fails to reimburse the paying agency for the full amount

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owed under paragraph (f) of this section, the amount outstanding must be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, or through the appropriate provisions governing Federal debt collection if the individual is no longer a Federal employee. However, the head of the agency may waive the debt under 5 U.S.C. 5584.

EFFECTIVE DATE NOTE: At 72 FR 67838, Dec. 3, 2007, §575.111 was amended by revising the first sentence and the last sentence in paragraph (f); removing the last sentence in paragraph (g); and adding new paragraphs (h), (i), and (j), effective Jan. 2, 2008. For the convenience of the user, the added and revised text is set forth as follows:

§575.111 Termination of a service agreement.

* * * * *

(f) Except as provided in paragraph (j) of this section, if an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain recruitment incentive payments previously paid by the agency that are attributable to the completed portion of the service period. * * * If the employee received recruitment incentive payments in excess of the amount that would be attributable to the completed portion of the service period, he or she must repay the excess amount, except when an authorized agency official waives the requirement to repay the excess amount under paragraph (h) of this section.

* * * * *

(h) If an employee received recruitment incentive payments in excess of the amount that would be attributable to the completed portion of the service period under paragraph (f) of this section, an authorized agency official may waive the requirement to repay the excess amount when, in the judgment of the official, collection of the excess amount would be against equity and good conscience and not in the best interest of the United States.

(i) The full amount of the authorized recruitment incentive must be prorated across the length of the service period to determine the amount of the recruitment incentive attributable to completed service and uncompleted service under this section.

(j) Notwithstanding paragraph (f) of this section, if an agency terminates a service agreement under paragraph (b) of this section when an employee is separated as a re-

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sult of material false or inaccurate statements or deception or fraud in examination or appointment, or as a result of failing to meet employment qualifications, the employee must repay all recruitment incentive payments received under that service agreement.

§575.112 Internal monitoring requirements and revocation or suspension of authority.

(a) Each agency must monitor the use of recruitment incentive plan and the payment of recruitment incentives are consistent with the requirements and criteria established under 5 U.S.C. 5753 and this subpart.

(b) When OPM finds that an agency is not paying recruitment incentives consistent with the agency's recruitment incentive plan and the criteria established under 5 U.S.C. 5753 and this subpart or otherwise determines that the agency is not using this authority selectively and judiciously, OPM may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component in the agency and, with respect to any category or categories of employees, require that the component obtain approval from the agency's headquarters level before paying a recruitment incentive to such employees; or

(2) Revoke or suspend the authority granted to the agency under this subpart for all or any part of the agency and, with respect to any category or categories of employees, require that the agency obtain OPM's approval before paying a recruitment incentive to such employees.

§575.113 Records and reports.

(a) Each agency must keep a record of each determination to pay a recruitment incentive and make such records available for review upon OPM's request.

(b) By March 31 in each of the years 2006 through 2010, each agency must submit a written report to OPM on the use of the recruitment incentive authority within the agency during the previous calendar year for use in compiling an OPM report to Congress, as required by section 101(c) of Public Law 108-411. Each agency report must include—

(1) A description of how the authority to pay recruitment incentives was used by the agency during the previous calendar year;

(2) The number and dollar amount of recruitment incentives paid during the previous calendar year by occupational series and grade, pay level, or other pay classification; and

(3) Other information, records, reports, and data as OPM may require.

§ 575.114 Recruitment bonus service agreements in effect before May 1, 2005.

This subpart does not apply to a recruitment bonus service agreement that was authorized under 5 U.S.C. 5753 and 5 CFR part 575, subpart A, before May 1, 2005. Such service agreements remain in effect until their expiration, subject to regulations applicable to recruitment bonuses before May 1, 2005. (See 5 CFR part 575 and part 530, subpart B, contained in the 5 CFR, parts 1 to 699, edition revised as of January 1, 2005.)

Subpart B—Relocation Incentives

SOURCE: 70 FR 25743, May 13, 2005, unless otherwise noted.

§ 575.201 Purpose.

This subpart contains regulations implementing 5 U.S.C. 5753, which authorizes payment of relocation incentives. An agency may pay a relocation incentive to a current employee who must relocate to accept a position in a different geographic area under the conditions specified in this subpart provided the agency determines that the position is likely to be difficult to fill in the absence of an incentive.

§ 575.202 Definitions.

In this subpart:

Agency means an executive agency or a legislative branch agency included in 5 U.S.C. 5102(a)(1).

Authorized agency official means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

Competencies means the knowledge, skills, abilities, behaviors, and other characteristics an employee needs to perform the duties of a position.

Employee has the meaning given that term in 5 U.S.C. 2105, except that the term also includes an employee described in 5 U.S.C. 2105(c).

Employee of the Federal Government means an employee (as that term is defined in 5 U.S.C. 2105, except that the term also includes an employee described 5 U.S.C. 2105(c) and (e)) of any part of the Government of the United States (which includes the United States Postal Service and the Postal Rate Commission).

Executive agency has the meaning given that term in 5 U.S.C. 105.

OPM means the Office of Personnel Management.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is relocated before deductions and including any special rate under 5 CFR part 530, subpart C, or similar payment under other legal authority, and any locality-based comparability payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excluding additional pay of any other kind. For example, a *rate of basic pay* does not include additional pay such as night shift differentials under 5 U.S.C. 5343(f) or environmental differentials under 5 U.S.C. 5343(c)(4).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment of not more than 4 years with the agency at the new duty station to which relocated in return for payment of a relocation incentive.

EFFECTIVE DATE NOTE: At 72 FR 67838, Dec. 3, 2007, § 575.202 was amended by revising the definition of *employee*; removing the definition of *employee of the Federal Government*; and adding a new definition of *Federal Government*, effective Jan. 2, 2008. For the convenience of the user, the added and revised text is set forth as follows:

§ 575.202 Definitions.

* * * * *

Employee has the meaning given that term in 5 U.S.C. 2105, except that the term also includes an employee described in 5 U.S.C. 2105(c). For the purpose of determining whether an individual had status as an employee of the Federal Government immediately prior to the relocation (i.e., in

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§ 575.205(a)(2)), *employee* also includes an employee described in 5 U.S.C. 2105(e).

* * * * *

Federal Government means all entities of the Government of the United States, including the United States Postal Service and the Postal Regulatory Commission.

* * * * *

§ 575.203 Eligible categories of employees.

Except as provided in § 575.204 of this part, an agency may pay a relocation incentive to an employee in the following categories of positions:

(a) A General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority);

(b) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(c) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(d) A position as a law enforcement officer, as defined in 5 CFR 550.103;

(e) A position under the Executive Schedule paid under 5 U.S.C. 5311-5317 or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(f) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3); or

(g) Any other position in a category for which payment of relocation incentives has been approved by OPM at the request of the head of an executive agency.

EFFECTIVE DATE NOTE: At 72 FR 67838, Dec. 3, 2007, § 575.203 was amended by redesignating paragraphs (a) through (g) as paragraphs (a)(1) through (a)(7), respectively; designating the introductory sentence as paragraph (a) introductory text and revising it; and adding a new paragraph (b), effective Jan. 2, 2008. For the convenience of the user, the added and revised text is set forth as follows:

§ 575.203 Eligible categories of employees.

(a) Except as provided in § 575.204, an Executive agency may pay a relocation incentive

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to an employee in the following categories of positions:

* * * * *

(b) Except as provided in § 575.204, a legislative agency may pay a relocation incentive to an employee in a General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority).

§ 575.204 Ineligible categories of employees.

An agency may not pay a relocation incentive to an employee in—

(a) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(b) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(c) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(d) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—

(1) To which an individual is appointed by the President without the advice and consent of the Senate;

(2) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(3) In which the employee is expected to receive an appointment as the head of an agency.

§ 575.205 Applicability to employees.

(a) An agency may pay a relocation incentive under the conditions prescribed in this subpart to—

(1) An employee of the Federal Government who must relocate to a different geographic area without a break in service to accept a position listed in § 575.203 in an agency when the position is likely to be difficult to fill as determined under § 575.206; or

(2) An employee of an agency who must relocate to a different geographic area (permanently or temporarily) to accept a position listed in § 575.203 when the position is likely to be difficult to fill as determined under § 575.206.

(b) An agency may pay a relocation incentive under paragraph (a) of this section when an employee must relocate to accept a position or assignment in a different geographic area. A position is considered to be in a different geographic area if the worksite of the new position is 50 or more miles from the worksite of the position held immediately before the move. If the worksite of the new position is less than 50 miles from the worksite of the position held immediately before the move, but the employee must relocate (i.e., establish a new residence) to accept the position, an authorized agency official may waive the 50-mile requirement and pay the employee a relocation incentive subject to the requirements of this subpart. In all cases, the employee must establish a residence in the new geographic area before the agency may pay a relocation incentive to the employee.

(c) A relocation incentive may be paid only when the employee's rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) for the position held immediately before the move is at least "Fully Successful" or equivalent.

EFFECTIVE DATE NOTE: At 72 FR 67838, Dec. 3, 2007, § 575.205 was amended by revising paragraph (a) and adding new paragraphs (d) and (e), effective Jan. 2, 2008. For the convenience of the user, the added and revised text is set forth as follows:

§ 575.205 Applicability to employees.

(a) An agency may pay a relocation incentive under the conditions prescribed in this subpart to an employee who—

(1) Relocates to a different geographic area (permanently or temporarily) to accept a position listed in § 575.203 in an agency when the position is likely to be difficult to fill, as determined under § 575.206; and

(2) Is an employee of the Federal Government immediately before the relocation.

* * * * *

(d) An agency may not commence a relocation incentive service agreement during—

(1) A period of employment established under any service agreement required for a recruitment incentive under 5 CFR part 575, subpart A, or

(2) A period of employment established under any service agreement required for a

relocation incentive previously authorized under this subpart.

(e) An agency may commence a relocation incentive service agreement during a period of employment established under a service agreement for a previously authorized retention incentive or for which an employee is receiving previously authorized retention incentive payments without a service agreement under 5 CFR part 575, subpart C. The service period under such a relocation incentive service agreement and the service period required by the retention incentive service agreement, if applicable, must be fulfilled concurrently.

§ 575.206 Authorizing a relocation incentive.

(a) *Authority of authorized agency official.* An authorized agency official retains sole and exclusive discretion, subject only to OPM review and oversight, to—

(1) Determine when a position is likely to be difficult to fill under paragraph (b) of this section;

(2) Approve a relocation incentive for an employee under § 575.205;

(3) Establish the criteria for determining the amount of a relocation incentive and the length of a service period under §§ 575.209 and 575.210, respectively;

(4) Request a waiver from OPM of the limitation on the maximum amount of a relocation incentive under § 575.209(c); and

(5) Establish the criteria for terminating a service agreement under § 575.211.

(b) *Factors for determining when a position is likely to be difficult to fill.* An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may determine that a position is likely to be difficult to fill if the agency is likely to have difficulty recruiting candidates with the competencies required for the position (or group of positions) in the absence of a relocation incentive. An agency must consider the following factors, as applicable to the case at hand, in determining whether a position (or group of positions) is likely to be difficult to fill in the absence of a relocation incentive and in documenting this determination as required by § 575.208:

(1) The availability and quality of candidates possessing the competencies required for the position, including the

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success of recent efforts to recruit candidates for similar positions using indicators such as offer acceptance rates, the proportion of positions filled, and the length of time required to fill similar positions;

(2) The salaries typically paid outside the Federal Government for similar positions;

(3) Recent turnover in similar positions;

(4) Employment trends and labor-market factors that may affect the agency's ability to recruit candidates for similar positions;

(5) Special or unique competencies required for the position;

(6) Agency efforts to use non-pay authorities, such as special training and work scheduling flexibilities, to resolve difficulties alone or in combination with a relocation incentive;

(7) The desirability of the duties, work or organizational environment, or geographic location of the position; and

(8) Other supporting factors.

(c) An agency may determine that a position (or group of positions) is likely to be difficult to fill if OPM has approved the use of a direct-hire authority applicable to the position (or group of positions) under 5 CFR part 337, subpart B.

[70 FR 25743, May 13, 2005, as amended at 70 FR 74996, Dec. 19, 2005]

EFFECTIVE DATE NOTE: At 72 FR 67839, Dec. 3, 2007, § 575.206 was amended by revising paragraphs (a)(4) and (b)(1), effective Jan. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 575.206 Authorizing a relocation incentive.

(a) * * *

(4) Request a waiver from OPM of the limitation on the maximum amount of a relocation incentive under § 575.209(c); and

* * * * *

(b) * * *

(1) The availability and quality of candidates possessing the competencies required for the position, including the success of recent efforts to recruit candidates for the position or similar positions using indicators such as offer acceptance rates, proportion of positions filled, and the length of time required to fill similar positions;

* * * * *

§ 575.207 Agency relocation incentive plan and approval levels.

(a) Before paying relocation incentives under this subpart, an agency must establish a relocation incentive plan. This plan must include the following elements:

(1) The designation of officials with authority to review and approve payment of relocation incentives, subject to paragraph (b) of this section, including;

(2) The categories of employees who are prohibited from receiving relocation incentives;

(3) Required documentation for determining that a position (or group of positions) is likely to be difficult to fill;

(4) Any requirements for determining the amount of a relocation incentive;

(5) The payment methods that may be authorized;

(6) Requirements governing service agreements which, at a minimum, must include—

(i) The criteria for determining the length of a service period under a service agreement;

(ii) The conditions for terminating a service agreement; and

(iii) The obligations of the agency and the employee, as applicable, if an agency terminates a service agreement; and

(7) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action and fulfill the requirements of §§ 575.212 and 575.213.

(b)(1) Except as provided in paragraph (b)(2) of this section, an agency official who is at least one level higher than the employee's supervisor must review and approve each determination to pay a relocation incentive, unless there is no official at a higher level in the agency.

(2) The higher level approval required by paragraph (b)(1) of this section is not needed when approving coverage of individual employees under a previously approved relocation incentive authorization if the case-by-case approval requirement is waived under § 575.208(b).

(c) Unless the head of the agency determines otherwise, an agency relocation incentive plan must apply uniformly across the agency.

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EFFECTIVE DATE NOTE: At 72 FR 67839, Dec. 3, 2007, § 575.207 was amended by revising paragraphs (a)(1) and (b)(1), effective Jan. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 575.207 Agency relocation incentive plan and approval levels.

(a) * * *

(1) The designation of officials with authority to review and approve payment of relocation incentives (subject to paragraph (b) of this section) and the designation of officials with authority to waive the repayment of a relocation incentive under § 575.211(h);

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, an authorized agency official who is at least one level higher than the employee's supervisor must review and approve each determination to pay a relocation incentive, unless there is no official at a higher level in the agency. The authorized agency official must review and approve the relocation incentive determination before the agency pays the incentive to the employee.

* * * * *

§ 575.208 Approval criteria and written determination.

(a)(1) For each determination to pay a relocation incentive under this subpart, an agency must document in writing—

(i) The basis for determining that a position is likely to be difficult to fill as determined under § 575.206;

(ii) The basis for authorizing a relocation incentive for an employee;

(iii) The basis for the amount and timing of the approved relocation incentive payments and the length of the required service period; and

(iv) That the worksite of the employee's new position is not in the same geographic area as the worksite of the position held immediately before the move (or that a waiver was approved under § 575.205(b)) and that the employee established a residence in the new geographic area, as required by § 575.205(b).

(2) Except as provided in paragraph (b) of this section, the agency must make each determination to pay a relocation incentive on a case-by-case basis for each employee.

(3) The agency must make the determination to pay a relocation incentive before the employee enters on duty in the position to which relocated.

(b)(1) An agency may waive the case-by-case approval requirement under paragraph (a) of this section when—

(i) The employee is a member of a group of employees subject to a mobility agreement and the agency determines that relocation incentives are necessary to retain employees subject to such an agreement to ensure continuation of operations; or

(ii) A major organizational unit of the agency is relocated to a new duty station and the agency determines that relocation incentives are necessary for a group of employees to ensure the continued operation of that unit without undue disruption of an activity or function that is deemed essential to the agency's mission or without undue disruption of service to the public.

(2) The written determination under paragraph (a) of this section must specify the group of employees covered by the case-by-case waiver, the conditions under which the waiver is approved, and the period of time for which the waiver may be applied.

§ 575.209 Payment of relocation incentives.

(a) An authorized agency official must establish the criteria for determining the amount of a relocation incentive. An agency may pay a relocation incentive—

(1) As an initial lump-sum payment at the commencement of the service period required by the service agreement;

(2) In installments throughout the service period required by the service agreement;

(3) As a final lump-sum payment upon the completion of the full service period required by the service agreement; or

(4) In a combination of these payment methods.

(b)(1) Except as provided in paragraph (c) of this section, the total amount of relocation incentive payments paid to an employee in a service period may not exceed 25 percent of the annual rate of basic pay of the employee at the beginning of the service

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period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years).

(2) For hourly rate employees who do not have a scheduled annual rate of basic pay, compute the annual rate required for paragraph (b)(1) of this section by multiplying the applicable hourly rate in effect at the beginning of the service period by 2,087 hours.

(3) For the purpose of determining the number of years in a service period under paragraph (b)(1) of this section, divide the total number of calendar days in the service period (as established under § 575.208) by 365 and round the result to two decimal places. For example, a service period covering 39 biweekly pay periods equals 546 days, and 546 days divided by 365 days equals 1.50 years.

(c)(1) An authorized agency official may request that OPM waive the limitation in paragraph (b)(1) of this section for an employee based on a critical agency need. The authorized agency official must determine that the competencies required for the position are critical to the successful accomplishment of an important agency mission, project, or initiative (e.g., programs or projects related to a national emergency or implementing a new law or critical management initiative). Under such a waiver, the total amount of relocation incentive payments paid to an employee in a service period may not exceed 50 percent of the annual rate of basic pay of the employee at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period. However, in no event may a waiver provide total relocation incentive payments exceeding 100 percent of the employee's annual rate of basic pay at the beginning of the service period.

(2) Waiver requests must include—

(i) A description of the critical agency need the proposed relocation incentive would address;

(ii) The documentation required by § 575.208;

(iii) The proposed relocation incentive payment amount and a justification for that amount;

(iv) The timing and method for making the relocation incentive payments;

(v) The period of service required; and

(vi) Any other information pertinent to the case at hand.

(d) A relocation incentive is not part of an employee's rate of basic pay for any purpose.

(e) Payment of a relocation incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

§ 575.210 Service agreement requirements.

(a) Before paying a relocation incentive, an agency must require the employee to sign a written service agreement to complete a specified period of employment with the agency (or successor agency in the event of a transfer of function) at the new duty station. An authorized agency official must establish the criteria for determining the length of a service period. The service period may not exceed 4 years.

(b)(1) The service agreement must include the commencement and termination dates of the required service period. Except as provided under paragraphs (b)(2) and (b)(3) of this section, the required service period must begin upon the commencement of service at the new duty station. The service period must terminate on the last day of a pay period.

(2) If service at the new duty station does not begin on the first day of a pay period, the agency must delay the service period commencement date so that a required service period begins on the first day of the first pay period beginning on or after the commencement of service at the new duty station.

(3) An agency may delay a service agreement commencement date until after the employee completes an initial period of formal training when continued employment in the position is contingent on successful completion of the formal training. The agency must make the determination to pay a relocation incentive before the employee enters on duty in the position, as required by § 575.208(a)(3). However, the service agreement must specify that if an employee does not successfully complete the training before the service period commences, the agency is not obligated to pay any portion of the relocation incentive to the employee.

(c) The service agreement must specify the total amount of the incentive, the method of paying the incentive, and the timing and amount of each incentive payment, as established under § 575.209.

(d) The service agreement must include the conditions under which the agency must terminate the service agreement (*i.e.*, if an employee is demoted or separated for cause, receives a rating of record of less than “Fully Successful” or equivalent, or otherwise fails to fulfill the terms of the service agreement) and the conditions under which the employee must repay a relocation incentive under § 575.211.

(e) The service agreement must include the conditions under which the agency may terminate the service agreement before the employee completes the agreed-upon service period. The service agreement must specify the effect of the termination under § 575.211, including the conditions under which the agency will agree to pay an additional relocation incentive payment for partially completed service under § 575.211(e) and (f).

(f) The service agreement may include any other terms or conditions that, if violated, will result in termination of the service agreement. For example, the service agreement may specify the employee’s work schedule, type of position, and the duties he or she is expected to perform. In addition, the service agreement may address the extent to which periods of time on detail, in a nonpay status, or in a paid leave status are creditable towards the completion of the service period.

EFFECTIVE DATE NOTE: At 72 FR 67839, Dec. 3, 2007, § 575.210 was amended by revising the second sentence in paragraph (e), effective Jan. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 575.210 Service agreement requirements.

* * * * *

(e) * * * The service agreement must specify the effect of the termination under § 575.211, including the conditions under which the agency will pay an additional relocation incentive payment for partially completed service under § 575.211(e) and (f).

* * * * *

§ 575.211 Termination of a service agreement.

(a) An authorized agency official may unilaterally terminate a relocation incentive service agreement based solely on the management needs of the agency. For example, an agency may terminate a service agreement when the employee’s position is affected by a reduction in force, when there are insufficient funds to continue the planned incentive payments, or when the agency assigns the employee to a different position (if the different position is not within the terms of the service agreement).

(b) An authorized agency official must terminate a relocation incentive service agreement if an employee is demoted or separated for cause (*i.e.*, for unacceptable performance or conduct), if the employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than “Fully Successful” or equivalent, or if the employee otherwise fails to fulfill the terms of the service agreement.

(c) The termination of a service agreement is not grievable or appealable.

(d) The agency must notify an employee in writing when it terminates a relocation incentive service agreement.

(e) If an authorized agency official terminates a service agreement under paragraph (a) of this section, the employee is entitled to all relocation incentive payments attributable to completed service and to retain any portion of a relocation incentive payment he or she received that is attributable to uncompleted service.

(f) If an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain relocation incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received relocation incentive payments that are less than the amount that would be attributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment

under the terms of the relocation incentive service agreement. If the employee received relocation incentive payments in excess of the amount that would be attributable to the completed portion of the service period, he or she must repay the excess amount.

(g) If an employee fails to reimburse the paying agency for the full amount owed under paragraph (f) of this section, the amount outstanding must be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, or through the appropriate provisions governing Federal debt collection if the individual is no longer a Federal employee. However, the head of the agency may waive the debt under 5 U.S.C. 5584.

EFFECTIVE DATE NOTE: At 72 FR 67839, Dec. 3, 2007, § 575.211 was amended by revising the last sentence in paragraph (f); removing the last sentence in paragraph (g); and adding new paragraphs (h) and (i), effective Jan. 2, 2008. For the convenience of the user, the added and revised text is set forth as follows:

§ 575.211 Termination of a service agreement.

* * * * *

(f) * * * If the employee received relocation incentive payments in excess of the amount that would be attributable to the completed portion of the service period, he or she must repay the excess amount, except when an authorized agency official waives the requirement to repay the excess amount under paragraph (h) of this section.

* * * * *

(h) If an employee received relocation incentive payments in excess of the amount that would be attributable to the completed portion of the service period under paragraph (f) of this section, an authorized agency official may waive the requirement to repay the excess amount when, in the judgment of the official, collection of the excess amount would be against equity and good conscience and not in the best interest of the United States.

(i) The full amount of the authorized relocation incentive must be prorated across the length of the service period to determine the amount of the relocation incentive attributable to completed service and uncompleted service under this section.

§ 575.212 Internal monitoring requirements and revocation or suspension of authority.

(a) Each agency must monitor the use of relocation incentives to ensure that the agency's relocation incentive plan and the payment of relocation incentives are consistent with the requirements and criteria established under 5 U.S.C. 5753 and this subpart.

(b) When OPM finds that an agency is not paying relocation incentives consistent with the agency's relocation incentive plan and the criteria established under this subpart or otherwise determines that the agency is not using this authority selectively and judiciously, OPM may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component in the agency and, with respect to any category or categories of employees, require that the component obtain approval from the agency's headquarters level before paying a relocation incentive to such employees; or

(2) Revoke or suspend the authority granted to the agency under this subpart for all or any part of the agency and, with respect to any category or categories of employees, require that the agency obtain OPM's approval before paying a relocation incentive to such employees.

§ 575.213 Records and reports.

(a) Each agency must keep a record of each determination to pay a relocation incentive and make such records available for review upon OPM's request.

(b) By March 31 in each of the years 2006 through 2010, each agency must submit a written report to OPM on the use of the relocation incentive authority within the agency during the previous calendar year for use in compiling an OPM report to Congress, as required by section 101(c) of Pubic Law 108–411. Each agency report must include—

(1) A description of how the authority to pay relocation incentives was used by the agency during the previous calendar year;

(2) The number and dollar amount of relocation incentives paid during the previous calendar year to individuals

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by occupational series and grade, pay level, or other pay classification; and

(3) Other information, records, reports, and data as OPM may require.

§ 575.214 Relocation bonus service agreements in effect before May 1, 2005.

This subpart does not apply to a relocation bonus service agreement that was authorized under 5 U.S.C. 5753 and 5 CFR part 575, subpart B, before May 1, 2005. Such service agreements remain in effect until their expiration, subject to regulations applicable to relocation bonuses before May 1, 2005. (See 5 CFR part 575 and part 530, subpart B, contained in the 5 CFR, parts 1 to 699, edition revised as of January 1, 2005.)

Subpart C—Retention Incentives

SOURCE: 70 FR 25747, May 13, 2005, unless otherwise noted.

§ 575.301 Purpose.

This subpart contains regulations implementing 5 U.S.C. 5754, which authorizes payment of retention incentives. An agency may pay a retention incentive to a current employee under the conditions specified in this subpart when an agency determines that the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and that the employee would be likely to leave in the absence of an incentive.

[70 FR 25747, May 13, 2005, as amended at 72 FR 64527, Nov. 16, 2007]

§ 575.302 Definitions.

In this subpart:

Agency means an executive agency or a legislative branch agency included in 5 U.S.C. 5102(a)(1).

Authorized agency official means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

Competencies means the knowledge, skills, abilities, behaviors, and other characteristics an employee needs to perform the duties of a position.

Employee has the meaning given that term in 5 U.S.C. 2105, except that the

term also includes an employee described in 5 U.S.C. 2105(c).

Executive agency has the meaning given that term in 5 U.S.C. 105.

OPM means the Office of Personnel Management.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which an employee is appointed before deductions and including any special rate under 5 CFR part 530, subpart C, or similar payment under other legal authority, and any locality-based comparability payment under 5 CFR part 531, subpart F, or similar payment under other legal authority, but excluding additional pay of any other kind. For example, a *rate of basic pay* does not include additional pay such as night shift differentials under 5 U.S.C. 5343(f) or environmental differentials under 5 U.S.C. 5343(c)(4).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency in return for payment of a retention incentive.

§ 575.303 Eligible categories of employees.

Except as provided in § 575.304, an agency may pay a retention incentive to a current employee who holds—

(a) A General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority);

(b) A senior-level or scientific or professional position paid under 5 U.S.C. 5376;

(c) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151;

(d) A position as a law enforcement officer, as defined in 5 CFR 550.103;

(e) A position under the Executive Schedule paid under 5 U.S.C. 5311-5317 or a position the rate of pay for which is fixed by law at a rate equal to a rate for the Executive Schedule;

(f) A prevailing rate position, as defined in 5 U.S.C. 5342(a)(3); or

(g) Any other position in a category for which payment of retention incentives has been approved by OPM at the

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request of the head of an executive agency.

EFFECTIVE DATE NOTE: At 72 FR 67839, Dec. 3, 2007, § 575.303 was amended by redesignating paragraphs (a) through (g) as paragraphs (a)(1) through (a)(7), respectively; designating the introductory sentence as paragraph (a) introductory text and revising it; and adding a new paragraph (b), effective Jan. 2, 2008. For the convenience of the user, the added and revised text is set forth as follows:

§ 575.303 Eligible categories of employees.

(a) Except as provided in § 575.304, an Executive agency may pay a retention incentive to a current employee who holds—

* * * * *

(b) Except as provided in § 575.304, a legislative agency may pay a retention incentive to a current employee who holds a General Schedule position paid under 5 U.S.C. 5332 or 5305 (or similar special rate authority).

§ 575.304 Ineligible categories of employees.

An agency may not pay a retention incentive to an employee in—

(a) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(b) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(c) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(d) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—

(1) To which an individual is appointed by the President without the advice and consent of the Senate;

(2) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members; or

(3) In which the employee is expected to receive an appointment as the head of an agency.

§ 575.305 Applicability to employees.

(a) An agency may pay a retention incentive to an individual employee under the conditions prescribed in this

subpart when the agency determines that—

(1) The unusually high or unique qualifications (*i.e.*, competencies) of the employee or a special need of the agency for the employee's services makes it essential to retain the employee; and

(2) The employee would be likely to leave the Federal service in the absence of a retention incentive.

(b) Except as provided in paragraph (c) of this section, an agency may pay a retention incentive to a group or category of employees under the conditions prescribed in this subpart when the agency determines that—

(1) The unusually high or unique qualifications (*i.e.*, competencies) of the group or category of employees or a special need of the agency for the employees' services makes it essential to retain the employees in that group or category; and

(2) There is a high risk that a significant number of the employees in the group would be likely to leave the Federal service in the absence of a retention incentive.

(c) An agency may not include in a group retention incentive authorization an employee covered by § 575.303(b), (c), (e) or those in similar categories of positions approved by OPM to receive retention incentives under § 575.303(g).

(d) A retention incentive may be paid only when the employee's rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) is at least "Fully Successful" or equivalent.

§ 575.306 Authorizing a retention incentive.

(a) *Authority of authorized agency official.* An authorized agency official retains sole and exclusive discretion, subject only to OPM review and oversight, to—

(1) Determine when the unusually high or unique qualifications (*i.e.*, competencies) of an employee or a special need of the agency for the employee's services makes it essential to retain the employee and when the employee would be likely to leave the Federal

service in the absence of a retention incentive;

(2) Determine when a group or category of employees has unusually high or unique qualifications (*i.e.*, competencies) or when an agency has a special need for the employees' services that makes it essential to retain the employees in that group or category and when there is a high risk that a significant number of employees in the group would be likely to leave the Federal service in the absence of a retention incentive;

(3) Approve a retention incentive for an employee (or group or category of employees, except as prohibited by § 575.305(c)) in a position (or positions) listed in § 575.303;

(4) Establish the criteria for determining the amount of a retention incentive and the length of a service period under §§ 575.309 and 575.310, respectively;

(5) Request a waiver from OPM of the limitation on the maximum amount of a retention incentive for an employee (or group or category of employees) under § 575.309(e); and

(6) Establish the criteria for terminating a service agreement or retention incentive payments under § 575.311.

(b) *Factors for authorizing a retention incentive for an individual employee.* An agency must consider the following factors, as applicable to the case at hand, in determining whether the unusually high or unique qualifications of an employee or a special need of the agency for an employee's services makes it essential to retain the employee and that the employee would be likely to leave the Federal service in the absence of a retention incentive:

(1) Employment trends and labor market factors such as the availability and quality of candidates in the labor market possessing the competencies required for the position and who, with minimal training, cost, or disruption of service to the public, could perform the full range of duties and responsibilities of the employee's position at the level performed by the employee;

(2) The success of recent efforts to recruit candidates and retain employees with competencies similar to those possessed by the employee for positions

similar to the position held by the employee;

(3) Special or unique competencies required for the position;

(4) Agency efforts to use non-pay authorities to help retain the employee instead of or in addition to a retention incentive, such as special training and work scheduling flexibilities or improving working conditions;

(5) The desirability of the duties, work or organizational environment, or geographic location of the position;

(6) The extent to which the employee's departure would affect the agency's ability to carry out an activity, perform a function, or complete a project that the agency deems essential to its mission;

(7) The salaries typically paid outside the Federal Government; and

(8) Other supporting factors.

(c) *Factors for authorizing a retention incentive for a group or category of employees.* (1) An agency must consider the factors in paragraph (b) of this section as they relate to determining whether a group or category of employees—

(i) Has unusually high or unique qualifications (*i.e.*, competencies) or that the agency has a special need for the employees' services that makes it essential to retain the employees in that category; and

(ii) That it is reasonable to presume that there is a high risk that a significant number of employees in the targeted category would be likely to leave the Federal service in the absence of a retention incentive.

(2) An agency must narrowly define a targeted category of employees using factors that relate to the conditions described in paragraph (c)(1) of this section. Factors that may be appropriate include the following: occupational series, grade level, distinctive job duties, unique competencies required for the position, assignment to a special project, minimum agency service requirements, organization or team designation, geographic location, and required rating of record. (While a rating of record of higher than the "Fully Successful" rating of record required by § 575.305(d) may be a factor used in defining the targeted category, a rating of record by itself is not sufficient

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to justify a retention incentive. A rating of record may function as a supporting factor in authorizing an incentive or setting the incentive rate only to the extent it directly relates to the conditions in paragraph (d) of this section.)

(d) An agency must document the determinations required under paragraphs (b) and (c) of this section as required by § 575.308.

§ 575.307 Agency retention incentive plan and approval levels.

(a) Before paying retention incentives under this subpart, an agency must establish a retention incentive plan. This plan must include the following elements:

(1) The designation of officials with authority to review and approve payment of retention incentives, subject to paragraph (b) of this section;

(2) The categories of employees who are prohibited from receiving retention incentives;

(3) Required documentation for determining that an employee would be likely to leave the Federal service;

(4) Any requirements for determining the amount of a retention incentive;

(5) The payment methods that may be authorized;

(6) Requirements governing service agreements which, at a minimum, must include—

(i) The criteria for determining the length of a service period under a service agreement;

(ii) The conditions for terminating a service agreement;

(iii) The obligations of the agency and the employee, as applicable, if an agency terminates a service agreement; and

(iv) The conditions for terminating retention incentive payments when no service agreement is required (see § 575.310(f)); and

(7) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action and fulfill the requirements of §§ 575.312 and 575.313.

(b)(1) Except as provided in paragraph (b)(2) of this section, an authorized agency official who is at least one level higher than the employee's (or group of employees') supervisor must review and approve each determination

to pay a retention incentive to an individual or group of employees, unless there is no official at a higher level in the agency.

(2) The higher level approval required by paragraph (b)(1) of this section is not needed when approving coverage of individual employees under a previously approved group retention incentive authorization.

(c) Unless the head of the agency determines otherwise, an agency retention incentive plan must apply uniformly across the agency.

EFFECTIVE DATE NOTE: At 72 FR 67839, Dec. 3, 2007, § 575.307 was amended by revising paragraph (a)(6)(iii) and adding a new sentence at the end of paragraph (b)(1), effective Jan. 2, 2008. For the convenience of the user, the added and revised text is set forth as follows:

§ 575.307 Agency retention incentive plan and approval levels.

(a) * * *

(6) * * *

(iii) The obligations of the agency if the agency terminates a service agreement; and

* * * * *

(b)(1) * * * The authorized agency official must review and approve the retention incentive determination before the agency pays the incentive to the employee.

* * * * *

§ 575.308 Approval criteria and written determination.

(a) An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may approve a retention incentive for an individual employee or group or category of employees using the approval criteria in § 575.306.

(b) For each determination to pay a retention incentive under this subpart, an agency must document in writing—

(1) The basis for determining that the unusually high or unique qualifications of the employee (or group of employees) or a special need of the agency for the employee's (or group of employees') services makes it essential to retain the employee(s);

(2) The basis for determining that the employee (or a significant number of employees in a group) would be likely

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to leave the Federal service in the absence of a retention incentive; and

(3) The basis for establishing the amount and timing of the approved retention incentive payment and the length of the required service period.

§ 575.309 Payment of retention incentives.

(a) An authorized agency official must determine the criteria for determining the amount of a retention incentive. An agency must establish a single retention incentive rate for each individual or group of employees that is expressed as a percentage of the employee's rate of basic pay. Except as provided in paragraph (e) of this section, a retention incentive rate may not exceed—

(1) 25 percent, if authorized for an individual employee; or

(2) 10 percent, if authorized for a group or category of employees.

(b) An agency may pay a retention incentive in—

(1) Installments after the completion of specified periods of service; or

(2) A single lump-sum payment after completion of the full service period.

(c)(1) An installment payment is derived by multiplying the rate of basic pay the employee earned in the installment period by a percentage not to exceed the incentive percentage rate established for the employee under paragraph (a) of this section. For example, an agency establishes a retention incentive percentage rate of 10 percent for an employee. The employee has a service agreement that provides for a retention incentive installment payment after completion of 6 pay periods of service at the full percentage rate established for the employee. The employee earns \$15,000 during the 6 pay periods of service. Upon completion of that service period, the employee will receive the accrued retention incentive installment payment of \$1,500 ($\$15,000 \times .10$).

(2) If the retention incentive installment payment percentage is less than the full percentage rate established for the employee under paragraph (a) of this section, any accrued portion of the retention incentive that is not paid as an installment payment during the service period must be paid as part of a

final installment payment to the employee after completion of the full service period under the terms of the service agreement established under § 575.310. For example, an agency establishes a retention incentive percentage rate of 10 percent for an employee. The employee's service agreement provides for a 7 percent retention incentive installment payment after completion of 6 pay periods of service. The employee earns \$15,000 during the 6 pay periods of service. Upon completion of that installment period, the employee accrues a retention incentive installment payment of \$1,500 ($\$15,000 \times .10$). However, under the terms of the service agreement, the employee will receive a \$1,050 retention incentive installment payment ($\$15,000 \times .07$). The agency must pay the accrued but unpaid portion of the retention incentive payment of \$450 ($\$1,500 - \$1,050$) as a final lump-sum payment upon completion of the full service period required by the service agreement.

(3) An agency may not pay a retention incentive as an initial lump-sum payment at the start of a service period or in advance of fulfilling the service period for which the retention incentive is being paid.

(d) A retention incentive payment paid as a single lump-sum payment upon completion of the full service period required by the service agreement is derived by multiplying the retention incentive percentage rate established under paragraph (a) of this section by the total basic pay the employee earned during the full service period.

(e)(1) An authorized agency official may request that OPM waive the limitation in paragraph (a) of this section and permit the agency to pay an individual employee or group of employees a retention incentive of up to 50 percent of the employee's basic pay based on a critical agency need. In addition to the determination required by § 575.308, the authorized agency official must determine that the employee's (or group of employees') unusually high or unique qualifications (*i.e.*, competencies) are critical to the successful accomplishment of an important agency mission, project, or initiative (*e.g.*, programs or projects related to a national emergency or implementing a

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new law or critical management initiative).

(2) Waiver requests must include—

(i) A description of the employee's work requirements and responsibilities or, if requesting a group retention incentive, a description of the group or category of employees and the number of employees to be covered by the proposed retention incentive;

(ii) A description of the critical agency need the proposed retention incentive would address;

(iii) The written documentation required by § 575.308;

(iv) The proposed retention incentive percentage rate and a justification for that percentage;

(v) The timing and method of making the retention incentive payments;

(vi) The service period required; and

(vii) Any other information pertinent to the case at hand.

(3) OPM may require that waiver requests for groups or categories of employees be coordinated with other agencies having similarly situated employees in the same category.

(4) Notwithstanding § 575.310(f), an authorized agency official must require a signed written service agreement for any employee who may receive a higher retention incentive as a result of approval of a waiver of the maximum limit on the amount of a retention incentive under paragraph (e)(1) of this section.

(f) An agency may not offer or authorize a retention incentive for an individual prior to employment with the agency.

(g) An agency may not commence a retention incentive service agreement (or begin paying a retention incentive) during a period of employment established under any service agreement required for payment of a recruitment incentive under 5 CFR part 575, subpart A, or a relocation incentive under 5 CFR part 575, subpart B. After a retention incentive service agreement has commenced (or retention incentive payments have commenced), an agency may pay a relocation incentive without affecting the payment of a retention incentive.

(h) A retention incentive is not part of an employee's rate of basic pay for any purpose.

(i) Payment of a retention incentive is subject to the aggregate limitation on pay under 5 CFR part 530, subpart B.

EFFECTIVE DATE NOTE: At 72 FR 67839, Dec. 3, 2007, § 575.309 was amended by revising the fourth sentence in paragraph (c)(1) and the fourth sentence in paragraph (c)(2); adding four new sentences at the end of paragraph (d); and revising paragraph (g), effective Jan. 2, 2008. For the convenience of the user, the added and revised text is set forth as follows:

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* * * * *

(c)(1) * * * The employee earns \$15,000 during the 6 pay periods of service (\$2,500 biweekly rate of basic pay × 6). * * *

(2) * * * The employee earns \$15,000 during the 6 pay periods of service (\$2,500 biweekly rate of basic pay × 6). * * *

* * * * *

(d) * * * For example, an agency establishes a retention incentive percentage rate of 10 percent for an employee. The employee has a service agreement that provides for a single lump-sum retention incentive payment after completion of the full service period required by the service agreement (i.e., 26 pay periods). The employee earns \$65,000 during the 26 pay periods of service (\$2,500 biweekly rate of basic pay × 26). Upon completion of the full service period, the employee will receive a single lump-sum retention incentive payment of \$6,500 (\$65,000 × .10).

* * * * *

(g) An agency may not commence a group or individual retention incentive service agreement or provide a group or individual retention incentive without a service agreement under § 575.310(f) for any biweekly pay period during—

(1) A period of employment established under any service agreement required for the payment of a recruitment incentive under 5 CFR part 575, subpart A, or a relocation incentive under 5 CFR part 575, subpart B, (see 5 CFR 575.205(e) regarding the authority to commence a relocation incentive service agreement during a period of employment established under a service agreement for a previously authorized retention incentive or for which an employee is receiving previously authorized retention incentive payments without a service agreement); or

(2) A period of employment established under a service agreement for a previously authorized retention incentive or for which an employee is receiving a previously authorized retention incentive without a service agreement under § 575.310(f) (including a

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group retention incentive with or without a service agreement).

* * * * *

§ 575.310 Service agreement requirements.

(a) Before paying a retention incentive, an agency must require an employee, including each employee covered by a group retention incentive authorization and any employee who may receive a higher retention incentive as a result of an approved waiver of the maximum limit on the amount of a retention incentive under § 575.309(e), to sign a written service agreement to complete a specified period of employment with the agency (or successor agency in the event of a transfer of function). An authorized agency official must determine the length of a service period. A written service agreement is not required under the condition described in paragraph (f) of this section.

(b) The service agreement must include the commencement and termination dates of the required service period. The service period must begin on the first day of a pay period and end on the last day of a pay period.

(c) The service agreement must specify the retention incentive percentage rate established under § 575.309(a); whether the incentive will be paid in installments or in a lump-sum payment upon completion of the service period provided in the service agreement; whether any installment payments will be paid at less than the full retention incentive percentage rate established under § 575.309(a), with the accrued but unpaid incentive payment being paid in a lump sum upon completion of the full service period required by the service agreement under § 575.309(c)(2); and the timing of incentive payments.

(d) The service agreement must include the conditions under which the agency must terminate the service agreement before the employee completes the agreed-upon service period (*i.e.*, if an employee is demoted or separated for cause, receives a rating of record of less than "Fully Successful" or equivalent, or otherwise fails to fulfill the terms of the service agreement)

under § 575.311. The service agreement must specify the effect of a termination, including the conditions under which the agency will pay an additional retention incentive payment for partially completed service under § 575.311(e) and (f).

(e) The service agreement may include any other terms or conditions that, if violated, will result in a termination of the service agreement under § 575.311(b). For example, the service agreement may specify the employee's work schedule, type of position, and the duties he or she is expected to perform. In addition, the service agreement may address the extent to which periods of time on detail, in a nonpay status, or in paid leave status are creditable towards the completion of the service period.

(f) A written service agreement is not required if the agency—

(1) Pays the retention incentive in bi-weekly installments; and

(2) Sets each biweekly installment payment at the full retention incentive percentage rate established for the employee under § 575.309(a).

[70 FR 25747, May 13, 2005, as amended at 70 FR 74996, Dec. 19, 2005]

§ 575.311 Continuation, reduction, and termination of retention incentives.

(a) An authorized agency official may unilaterally terminate a retention incentive service agreement based solely on the management needs of the agency. For example, an agency may terminate a service agreement when the employee's position is affected by a reduction in force, when there are insufficient funds to continue the planned retention incentive payments, when conditions no longer warrant payment at the level originally approved or at all, or when the agency assigns the employee to a different position (if the different position is not within the terms of the service agreement).

(b) An authorized agency official must terminate a retention incentive service agreement if the employee is demoted or separated for cause (*i.e.*, for unacceptable performance or conduct), if the employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5

CFR part 430) of less than “Fully Successful” or equivalent, or if the employee otherwise fails to fulfill the terms of the service agreement.

(c) The termination of a service agreement is not grievable or appealable.

(d) The agency must notify an employee in writing when it terminates a retention incentive service agreement.

(e) If an authorized agency official terminates a service agreement under paragraph (a) of this section, the employee is entitled to retain any retention incentive payments that are attributable to completed service and to receive any portion of a retention incentive payment owed by the agency for completed service.

(f) If an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain retention incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received retention incentive payments that are less than the amount that would be attributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment under the terms of the retention incentive service agreement.

(g)(1) For retention incentives that are paid when no service agreement is required under §575.310(f), an agency must review each determination to pay the incentive at least annually to determine whether payment is still warranted. An authorized agency official must certify this determination in writing.

(2) An agency may continue paying a retention incentive to an employee when no service agreement is required as long as the conditions giving rise to the original determination to pay the incentive still exist.

(3) An agency must reduce or terminate a retention incentive authorization when no service agreement is required whenever payment at the level originally approved is no longer warranted. An agency may consider the following factors in determining

whether to reduce or terminate a retention incentive—

(i) Whether a lesser amount (or none at all) would be sufficient to retain the employee (or group or category of employees);

(ii) Whether labor-market factors make it more likely (or reasonably likely) to recruit a candidate with competencies similar to those possessed by the employee (or group or category of employees);

(iii) Whether the agency’s need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue payment at the level originally approved (or at all);

(iv) Whether budgetary considerations make it difficult to continue payment at the level originally approved (or at all); or

(v) Other supporting factors.

(4) An agency must terminate a retention incentive authorization when no service agreement is required if the employee is demoted or separated for cause (*i.e.*, for unacceptable performance or conduct), the employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than “Fully Successful” or equivalent, or the agency assigns the employee to a different position.

(5) Termination or reduction of a retention incentive is not grievable or appealable under any law or regulation.

(6) If an agency reduces or terminates a retention incentive under paragraph (g) of this section, the agency must notify the employee in writing. The employee is entitled to receive any scheduled incentive payments through the end of the pay period in which the written notice is provided or until the date of separation, if sooner.

EFFECTIVE DATE NOTE: At 72 FR 67840, Dec. 3, 2007, §575.311 was revised, effective Jan. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

§575.311 Continuation, reduction, and termination of retention incentives.

(a)(1) An authorized agency official must terminate a retention incentive service agreement when conditions change such that

the original determination to pay the retention incentive no longer applies (e.g., when the agency assigns the employee to a different position that is not within the terms of the service agreement) or when payment is no longer warranted after considering factors such as—

(i) Whether a retention incentive is needed to retain the employee (or group of employees),

(ii) Whether labor-market factors make it more likely (or reasonably likely) to recruit a candidate with competencies similar to those possessed by the employee (or group of employees), or

(iii) Whether the agency's need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue paying a retention incentive.

(2) An authorized agency official may terminate unilaterally a retention incentive service agreement based solely on the management needs of the agency, even if the conditions giving rise to the original determination to pay the incentive still exist. For example, an agency may terminate a service agreement when there are insufficient funds to continue the planned retention incentive payments.

(b) An authorized agency official must terminate a retention incentive service agreement when—

(1) The employee is demoted or separated for cause (i.e., for unacceptable performance or conduct);

(2) The employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than "Fully Successful" or equivalent; or

(3) The employee otherwise fails to fulfill the terms of the service agreement.

(c) If an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain any retention incentive payments that are attributable to completed service and to receive any portion of a retention incentive payment owed by the agency for completed service.

(d) If an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain retention incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received retention incentive payments that are less than the amount that would be attributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment under the terms of the retention incentive service agreement.

(e) To determine the amount of retention incentive payments that may be owed to an employee for completed service under paragraphs (c) and (d) of this section, multiply the total rate of basic pay the employee earned during the completed portion of the service period by the retention incentive percentage rate established for the employee under §575.309(a) and subtract the amount of retention incentive payments already paid to the employee from this product. The difference is the amount owed to the employee for completed service.

(f)(1) For retention incentives that are paid when no service agreement is required under §575.310(f), an agency must review each determination to pay the incentive at least annually to determine whether payment is still warranted. An authorized agency official must certify this determination in writing.

(2) An agency may continue paying a retention incentive to an employee when no service agreement is required as long as the conditions giving rise to the original determination to pay the incentive still exist.

(3) An authorized agency official must reduce or terminate a retention incentive authorization when no service agreement is required whenever conditions change such that the original determination to pay the retention incentive no longer applies (e.g., when the agency assigns the employee to a different position that is not within the terms of the original determination) or when payment is no longer warranted at the level originally approved or at all after considering factors such as—

(i) Whether a lesser amount (or none at all) would be sufficient to retain the employee (or group or category of employees);

(ii) Whether labor-market factors make it more likely (or reasonably likely) to recruit a candidate with competencies similar to those possessed by the employee (or group or category of employees); or

(iii) Whether the agency's need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue payment at the level originally approved (or at all).

(4) An authorized agency official may terminate unilaterally a retention incentive authorization when no service agreement is required based solely on the management needs of the agency, even if the conditions giving rise to the original determination to pay the incentive still exist. For example, an agency may terminate a retention incentive when there are insufficient funds to continue the planned retention incentive payments.

(5) An authorized agency official must terminate a retention incentive authorization when no service agreement is required when—

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(i) The employee is demoted or separated for cause (i.e., for unacceptable performance or conduct), or

(ii) The employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than "Fully Successful" or equivalent.

(g) The termination of a retention incentive service agreement or the reduction or termination of a retention incentive under this section is not grievable or appealable.

(h) If an agency terminates a retention incentive service agreement or reduces or terminates a retention incentive paid without a service agreement under this section, the agency must notify the employee in writing. When a retention incentive is terminated under paragraph (f) of this section, the employee is entitled to receive any scheduled incentive payments through the end of the pay period in which the written notice is provided or until the date of separation, if sooner.

§ 575.312 Internal monitoring requirements and revocation or suspension of authority.

(a) Each agency must monitor the use of retention incentives to ensure that its retention incentive plan and the payment of retention incentives are consistent with the requirements and criteria established under 5 U.S.C. 5754 and this subpart.

(b) When OPM finds that an agency is not paying retention incentives consistent with the agency's retention incentive plan and the criteria established under 5 U.S.C. 5754 or this subpart or otherwise determines that the agency is not using this authority selectively and judiciously, OPM may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and, with respect to any category or categories of employees, require that the component obtain approval from the agency's headquarters level before paying a retention incentive to such employees; or

(2) Revoke or suspend the authority granted to the agency under this subpart for all or any part of the agency and, with respect to any category or categories of employees, require that the agency obtain OPM's approval before paying a retention incentive to such employees.

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§ 575.313 Records and reports.

(a) Each agency must keep a record of each determination to pay a retention incentive and make such records available for review upon OPM's request.

(b) By March 31 in each of the years 2006 through 2010, each agency must submit a written report to OPM on the use of the retention incentive authority within the agency during the previous calendar year for use in compiling an OPM report to Congress, as required by section 101(c) of Public Law 108–411. Each agency report must include—

(1) A description of how the authority to pay retention incentives was used in the agency during the previous calendar year;

(2) The number and dollar amount of retention incentives paid during the previous calendar year to individuals by occupational series and grade, pay level, or other pay classification; and

(3) Other information, records, reports, and data as OPM may require.

§ 575.314 Retention allowances in effect before May 1, 2005.

This subpart does not apply to a retention allowance authorized under 5 U.S.C. 5754 and 5 CFR part 575, subpart C, before May 1, 2005. Such allowances must continue to be paid until the retention allowance is reauthorized or terminated or until April 30, 2006, whichever comes first, subject to the regulations applicable to retention allowances before May 1, 2005. (See 5 CFR part 575 and part 530, subpart B, contained in the 5 CFR, parts 1 to 699, edition revised as of January 1, 2005.)

§ 575.315 Retention incentives for employees likely to leave for a different position in the Federal service.

(a) *Authority.* (1) An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may approve a retention incentive for an individual employee under the conditions prescribed in this section when the agency determines that—

(i) Given the agency's mission requirements and employee's competencies, the agency has a special need for the employee's services that

makes it essential to retain the employee in his or her current position during a period of time before the closure or relocation of the employee's office, facility, activity, or organization; and

(ii) The employee would be likely to leave for a different position in the Federal service in the absence of a retention incentive.

(2) An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may approve a retention incentive for a group or category of employees (subject to the exclusions in §575.305(c)) under the conditions prescribed in this section when the agency determines that—

(i) Given the agency's mission requirements and employees' competencies, the agency has a special need for the employees' services that makes it essential to retain the employees in their current positions during a period of time before the closure or relocation of the employees' office, facility, activity, or organization; and

(ii) There is a high risk that a significant number of the employees in the group would be likely to leave for different positions in the Federal service in the absence of a retention incentive.

(b) *Employee eligibility.* An agency may pay a retention incentive to an employee under this section when—

(1) The employee holds a position listed in §575.303, and is not excluded by §575.304;

(2) The employee's rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) is at least "Fully Successful" or equivalent; and

(3) The agency has provided a general or specific written notice to the employee that his or her position may or would be affected by the closure or relocation of the employee's office, facility, activity, or organization (e.g., the employee's position may or would move to a new geographic location or the employee's position may or would be eliminated).

(c) *Retention incentive plan and approval levels.* Before authorizing a retention incentive under this section, an agency must include in its retention incentive plan established under

§575.307(a) the conditions and requirements governing the use of retention incentives under this section for employees who would be likely to leave for a different position in the Federal service before the closure or relocation of the employees' office, facility, activity, or organization, including a designation of the authorized agency officials who may approve retention incentives under this section, consistent with the approval requirements in §575.307(b).

(d) *Approval criteria and written determination.* (1) For each determination to pay a retention incentive under this section, an agency must document in writing—

(i) The basis for determining the agency has a special need for the employee's (or group of employees') services that makes it essential to retain the employee(s), based on the agency's mission needs and the employee's (or group of employees') competencies, during a period of time before the closure or relocation of the employee's (or group of employees') office, facility, activity, or organization;

(ii) The basis for determining, in the absence of a retention incentive, the employee (or a significant number of employees in a group) would be likely to leave for a different position in the Federal service; and

(iii) The basis for establishing the amount and timing of the approved retention incentive payment and the length of the required service period.

(2) An agency must address the following factors when documenting the determination required by paragraph (a) of this section for an individual employee:

(i) The factors for authorizing a retention incentive for an individual employee described in §575.306(b) as they relate to a determination made under paragraph (a)(1) of this section;

(ii) The extent to which the employee's departure for a different position in the Federal service would affect the agency's ability to carry out an activity, perform a function, or complete a project the agency deems essential to its mission before and during the closure or relocation period (e.g., the agency's need to retain the employee to ensure minimal disruption in the

performance of mission-critical functions, continuity of key operations, or minimal disruption of service to the public before and during the closure or relocation; to train new employees who will move with the organization to the new geographic location; to assist with the actual closure or relocation of the office, facility, activity, or organization; or to perform similar mission-essential functions before or during the closure or relocation);

(iii) The competencies possessed by the employee that are essential to retain; and

(iv) The agency (which may be in the executive, judicial, or legislative branch) for which the employee would be likely to leave in the absence of the retention incentive.

(3) An agency must address the following factors when documenting the determination required by paragraph (a) of this section for a group or category of employees:

(i) The factors for authorizing a retention incentive for a group or category of employees described in § 575.306(c) as they relate to the determination made under paragraph (a)(2) of this section; and

(ii) The factors in paragraphs (d)(2)(ii) through (d)(2)(iv) of this section as they relate to the determination made under paragraph (a)(2) of this section for the group or category of employees.

(4) An agency must narrowly define a targeted category of employees using factors that relate to the conditions described in paragraph (a)(2) of this section. The factors that may be appropriate are described in § 575.306(c)(2), except that each group retention incentive authorized under this section may cover no more than one occupational series.

(e) *Payment of retention incentives.* (1) Except as provided in paragraph (e)(2) of this section, the provisions regarding computing and paying retention incentives under § 575.309 apply to computing and paying retention incentives under this section for employees who would be likely to leave for a different position in the Federal service before the closure or relocation of the their office, facility, activity, or organization.

(2) An agency may not pay retention incentives under this section in bi-weekly installments at the full retention incentive percentage rate established for the employee under § 575.309(a).

(f) *Service agreement requirements.* (1) The service agreement provisions in §§ 575.310(b) through 575.310(e) apply to retention incentive service agreements under this section, subject to the additional requirements in paragraphs (f)(2) through (f)(5) of this section.

(2) Before paying a retention incentive under this section, an agency must require an employee, including each employee covered by a group retention incentive authorization, to sign a written service agreement to complete a specified period of employment with the agency.

(3) In no event, may the service period under a service agreement established under this paragraph extend past the date on which the employee's position is actually affected by the relocation or closure of the employee's office, facility, activity, or organization (e.g., the date the employee's position moves to a new geographic location or the date the employee's position is eliminated).

(4) In addition to the terminating conditions in § 575.310(d) and (e), the service agreement must include the conditions under which the agency must terminate the service agreement under paragraph (g) of this section, including the conditions under which the agency will pay an additional retention incentive payment for partially completed service under § 575.311.

(5) The service agreement must include a notification to the employee that the agency will review the determination to pay the retention incentive at least annually to determine whether payment is still warranted, as required by paragraph (g) of this section.

(g) *Termination of retention incentives.* (1) The provisions in § 575.311 regarding termination of retention incentive service agreements and paragraphs (g)(2) through (g)(4) of this section apply to the termination of retention incentives authorized under this section. Each determination to pay a retention incentive under this section

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must be reviewed at least annually to determine if payment is still warranted. An authorized agency official must certify this determination in writing.

(2) In addition to the terminating conditions in § 575.311(a) and (b), an authorized agency official must terminate a retention incentive service agreement under this section if—

(i) The closure or relocation is cancelled or no longer affects the employee's position;

(ii) The employee moves to another position not affected by the closure or relocation (including another position within the same agency);

(iii) For relocation situations, the employee accepts the agency's offer to relocate with his or her the office, facility, activity, or organization and, thus, the employee is no longer likely to leave for a different position in the Federal service; or

(iv) The employee moves to a different position in the same office, facility, activity, or organization subject to closure or relocation that is not covered by the employee's service agreement. In this situation, the agency may authorize a new retention incentive for the employee under this section, as appropriate.

(3) If an authorized agency official terminates a service agreement under paragraph (g)(2)(ii) or (iv) of this section in cases in which the employee's movement to another position is by management action and not at the employee's request or under paragraph (g)(2)(i) of this section, the employee is entitled to retain any retention incentive payments that are attributable to completed service and to receive any portion of a retention incentive payment owed by the agency for completed service.

(4) If an authorized agency official terminates a service agreement in termination actions under paragraph (g)(2) of this section that are not covered by paragraph (g)(3) of this section, the employee is entitled to retain retention incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received retention incentive payments that are less than the amount that would be at-

tributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment under the terms of the retention incentive service agreement.

(h) *Monitoring requirements.* The monitoring requirements in § 575.312 apply to retention incentives authorized under this section.

(i) *Records and reports.* (1) In addition to the recordkeeping requirements in § 575.313(a), each agency must submit a written report to OPM by March 31 of each year on the use of retention incentives under this section. Each report must include—

(i) A description of how the authority to pay retention incentives under this section was used in the agency during the previous calendar year;

(ii) The number and dollar amount of retention incentives paid during the previous calendar year to individuals under this section by occupational series and grade, pay level, or other pay classification;

(iii) The agency (which may be in the executive, judicial, legislative branch) to which each employee would be likely to leave in the absence of a retention incentive;

(iv) Each employee's official worksite and the geographic location of the agency (which may be in the executive, judicial, or legislative branch) for which each employee would be likely to leave in the absence of a retention incentive; and

(v) Other information, records, reports, and data as OPM may require.

(2) In each of the years 2008 through 2010, the written report required by paragraph (i)(1) of this section may be included in the agency's written report to OPM for OPM's report to Congress under § 575.313(b).

[72 FR 64527, Nov. 16, 2007]

Subpart D—Supervisory Differentials

SOURCE: 56 FR 20338, May 3, 1991, unless otherwise noted.

§ 575.401

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§ 575.401 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5755, which authorizes payment of a supervisory differential to an employee under the General Schedule who has supervisory responsibility for one or more civilian employees not under the General Schedule if one or more of the subordinate civilian employees would, in the absence of such a differential, be paid more than the supervisory employee.

§ 575.402 Delegation of authority.

(a) The head of an agency may pay a supervisory differential to a supervisor who is—

(1) In a General Schedule position paid under 5 U.S.C. 5332; and

(2) Responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule if the continuing pay (as determined under § 575.405(d) of this part) of one or more of the subordinates would, in the absence of such a differential, be more than the continuing pay (as determined under § 575.405(c) of this part) of the supervisor.

(b) A supervisory differential may not be paid on the basis of supervising a civilian employee whose rate of basic pay exceeds the maximum rate of basic pay established for grade GS-15 on the pay schedule applicable to the GS supervisor, including a schedule for any applicable special rate under 5 CFR part 530, subpart B; locality-based comparability payment under 5 CFR part 531, subpart F; or similar payment or supplement under other legal authority.

[56 FR 20338, May 3, 1991, as amended at 57 FR 37394, Aug. 19, 1992; 58 FR 65537, Dec. 15, 1993; 61 FR 3543, Feb. 1, 1996; 70 FR 25751, May 13, 2005]

EFFECTIVE DATE NOTE: At 72 FR 67841, Dec. 3, 2007, § 575.402 was amended by revising paragraph (b), effective Jan. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 575.402 Delegation of authority.

* * * * *

(b) A supervisory differential may not be paid on the basis of supervising a civilian employee whose rate of basic pay exceeds the

maximum rate of basic pay established for grade GS-15 on the pay schedule applicable to the GS supervisor, including a schedule for any applicable special rate under 5 CFR part 530, subpart C; locality-based comparability payment under 5 CFR part 531, subpart F; or similar payment or supplement under other legal authority.

§ 575.403 Definitions.

In this subpart:

Agency has the meaning given that term in 5 U.S.C. 5102.

Continuing pay means the aggregate of all continuing payments and annual premium pay received by an employee at any one time.

Continuing payment means basic pay and any other form of pay that is paid in the same manner and at the same time as basic pay—*i.e.*, for periods during which an employee receives basic pay.

Employee has the meaning given that term in 5 U.S.C. 5102.

Head of agency means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is or will be appointed before deductions and including any special rate under 5 CFR part 530, subpart B, or any locality-based comparability payment under 5 CFR part 531, subpart F, or other similar payment or supplement under other legal authority, but excluding any additional pay of any kind.

Supervisor has the meaning given that term in 5 U.S.C. 7103(a)(10).

[56 FR 20338, May 3, 1991, as amended at 57 FR 2435, Jan. 22, 1992; 61 FR 3543, Feb. 1, 1996; 70 FR 25751, May 13, 2005]

EFFECTIVE DATE NOTE: At 72 FR 67841, Dec. 3, 2007, § 575.403 was amended by revising the definition of *rate of basic pay*, effective Jan. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 575.403 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is or will be appointed before deductions and including

any special rate under 5 CFR part 530, subpart C; locality-based comparability payment under 5 CFR part 531, subpart F; or similar payment or supplement under other legal authority, but excluding additional pay of any other kind. For example, *rate of basic pay* excludes a night differential under 5 U.S.C. 5343(f), an environment differential under 5 U.S.C. 5343(c)(4), or a similar payment under other legal authority.

* * * * *

§ 575.404 Use of authority.

(a) Each determination to pay a supervisory differential shall be made in writing under procedures established by each agency.

(b) The procedures established by each agency under paragraph (a) of this section shall provide that—

(1) Each determination to pay a supervisory differential, including the amount of such differential, shall be reviewed and approved by an official of the agency who is at higher level than the official who made the initial decision, unless there is no official at a higher level in the agency; and

(2) In determining whether to use the authority under 5 U.S.C. 5755 and this subpart and in determining the amount of such differential, the relationship in pay among supervisors under the General Schedule in the same organizational component of the agency shall be considered, as well as the relationship in pay between the supervisor and his or her subordinate(s).

(3) Each determination to pay a supervisory differential shall be documented.

§ 575.405 Calculation and payment of supervisory differential.

(a) A supervisory differential shall be calculated as a percentage of the supervisor's rate of basic pay or as a dollar amount and shall be paid in the same manner and at the same time as the supervisor's basic pay—*i.e.*, the differential shall be paid at an hourly rate for each hour during which the supervisor receives basic pay.

(b) The amount of a supervisory differential shall not cause the supervisor's continuing pay, as determined under paragraph (c) of this section, to exceed the continuing pay of the highest paid subordinate not under the

General Schedule, as determined under paragraph (d) of this section, by more than 3 percent.

(c) For purposes of comparing the continuing pay of a supervisor whose position is under the General Schedule with the continuing pay of a subordinate whose position is not under the General Schedule, the following payments shall be included in determining the amount of continuing pay received by the supervisor:

(1) Basic pay, including a retained rate of pay under 5 U.S.C. 5363 and part 536 of this chapter or other similar authority;

(2) Any other continuing payment, except night, Sunday, or holiday premium pay or a hazardous duty differential under chapter 55 of title 5, United States Code;

(3) Premium pay paid on an annual basis under 5 U.S.C. 5545(c); and

(4) Any other continuing payment, except night, Sunday, or holiday premium pay or hazardous duty pay under 5 U.S.C. chapter 55, subchapter V; recruitment or relocation incentives under 5 U.S.C. 5753; retention incentives under 5 U.S.C. 5754; or similar payments under other legal authority.

(d) For purposes of comparing the continuing pay of a supervisor whose position is under the General Schedule with the continuing pay of a subordinate whose position is not under the General Schedule, the following payments shall be included in determining the amount of continuing pay received by the subordinate:

(1) Basic pay, excluding a night or environmental differential under 5 U.S.C. 5354(f) or part 5343(c)(4), respectively, or similar payment under other legal authority;

(2) Any other continuing payment, except Sunday or holiday pay under 5 U.S.C. chapter 55, subchapter V; recruitment or relocation incentives under 5 U.S.C. 5753; retention incentives under 5 U.S.C. 5754; or similar payments under other legal authority; and

(3) Premium pay paid on an annual basis under an authority similar to 5 U.S.C. 5545(c).

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(e) For the purpose of making any of the comparisons required by this subpart, continuing pay shall be calculated on an annual basis for both the supervisor and the subordinate.

(f) Payment of a supervisory differential is subject to the aggregate limitation on pay under 5 U.S.C. 5307 and subpart B of part 530 of this chapter.

(g) A supervisory differential shall not be considered part of the supervisor's rate of basic pay for any purpose.

[56 FR 20338, May 3, 1991, as amended at 57 FR 2435, Jan. 22, 1992; 57 FR 37394, Aug. 19, 1992; 59 FR 66154, Dec. 23, 1994; 61 FR 3544, Feb. 1, 1996; 70 FR 25752, May 13, 2005]

EFFECTIVE DATE NOTE: At 72 FR 67841, Dec. 3, 2007, § 575.405 was amended by revising paragraph (d)(1), effective Jan. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 575.405 Calculation and payment of supervisory differential.

* * * * *

(d) * * *

(1) Basic pay, excluding a night or environmental differential under 5 U.S.C. 5343(f) or 5343(c)(4), respectively, or similar payment under other legal authority;

* * * * *

§ 575.406 Adjustment or termination of supervisory differential.

(a) An agency may establish procedures that allow for adjusting or terminating a supervisory differential at any time the agency determines it is appropriate to do so.

(b) A supervisory differential shall be terminated when the continuing pay of the supervisor (not including the supervisory differential) exceeds the continuing pay of the highest paid subordinate whose position is not under the General Schedule.

(c) A supervisory differential shall be reduced or terminated, as appropriate, when the continuing pay of the supervisor (including the supervisory differential) exceeds the continuing pay of the highest paid subordinate whose position is not under the General Schedule by more than 3 percent.

(d) The effective date of a reduction or termination of a supervisory differential under paragraph (b) or (c) of

this section shall be not later than 30 calendar days after the date on which the event that necessitates the reduction or termination occurs.

(e) Each determination to adjust a supervisory differential shall be made in writing under procedures established by each agency similar to those established under § 575.404 of this part.

(f) The reduction or termination of a supervisory differential may not be appealed. However, the preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12 of title 5, United States Code, or under any of the laws referred to in 5 U.S.C. 2302(d).

[56 FR 20338, May 3, 1991, as amended at 57 FR 37394, Aug. 19, 1992]

§ 575.407 Records.

(a) Each agency shall keep a record of each determination required by §§ 575.404(a) and 575.406(e) of this part. Each record shall contain sufficient information to allow reconstruction of the action, including the basis for determining the amount of the differential and the comparison of continuing pay required by § 575.405(b) of this part.

(b) Each agency shall promptly submit a report of each determination made to establish, adjust, or terminate a supervisory differential as a part of its regular submission to OPM's Central Personnel Data File.

Subpart E—Extended Assignment Incentives

SOURCE: 68 FR 53669, Sept. 12, 2003, unless otherwise noted.

§ 575.501 Purpose.

This subpart contains OPM regulations implementing 5 U.S.C. 5757, which authorizes the payment of extended assignment incentives. Subject to the requirements of this subpart, an agency may pay an extended assignment incentive to eligible Federal employees assigned to positions located in a territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands who agree to complete

a specified additional period of employment with the agency in that location.

§ 575.502 Definitions.

In this subpart:

Agency means an "Executive agency," as defined in 5 U.S.C. 105.

Authorized agency official means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

Employee means an employee of an agency who satisfies the definition of that term in 5 U.S.C. 2105.

Involuntarily reassigned refers to a reassignment initiated by an agency against an employee's will and without the employee's consent for reasons other than cause on charges of misconduct, delinquency, or inefficiency.

Involuntarily separated refers to a separation initiated by an agency against an employee's will and without the employee's consent for reasons other than cause on charges of misconduct, delinquency, or inefficiency. In addition, when an employee is separated because he or she declines to accept reassignment to another geographic area outside one of the covered locations, the separation is involuntary if the employee's position description or other written agreement does not provide for such reassignment. However, an employee's separation is not involuntary if, after such a written mobility agreement is added, the employee accepts one reassignment outside his or her particular territory, possession, or commonwealth, but subsequently declines another reassignment. An employee's separation as a result of disability retirement, a disability that prevents an employee from continuing Federal service or is the basis for separation by the agency as determined by acceptable medical evidence, or the death of an employee is considered to be an involuntary separation.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including any special rate under 5 CFR part 530, subpart B, or locality-based comparability payment under 5 CFR part 531, subpart F, or similar payment or supplement under other legal authority, but before deductions and exclusive of additional pay of

any kind. For example, a *rate of basic pay* may not include nonforeign area cost-of-living allowances under 5 U.S.C. 5941, night shift differentials under 5 U.S.C. 5343(f), or environmental differentials under 5 U.S.C. 5343(c)(4).

Service agreement means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency in a particular territory, possession, or commonwealth in return for payment of an extended assignment incentive.

Service period means an agreed-upon period of employment an employee is obligated to complete under a service agreement.

Territory, possession, or commonwealth means a territory or a possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

[68 FR 53669, Sept. 12, 2003, as amended at 70 FR 25752, May 13, 2005]

EFFECTIVE DATE NOTE: At 72 FR 67841, Dec. 3, 2007, § 575.502 was amended by revising the first sentence in the definition of *rate of basic pay*, effective Jan. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

§ 575.502 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including any special rate under 5 CFR part 530, subpart C; locality-based comparability payment under 5 CFR part 531, subpart F; or similar payment under other legal authority, but before deductions and exclusive of additional pay of any other kind. * * *

* * * * *

§ 575.503 Who may approve the payment of an extended assignment incentive?

An authorized agency official must review and approve the offer of an extended assignment incentive for an employee, including the amount of such incentive. The authorized agency official must be at a higher level than the official who made the initial decision to offer an extended assignment incentive, unless there is no official at a higher level in the agency.

§ 575.504 What requirements must an agency satisfy before authorizing the payment of an extended assignment incentive?

Before paying an extended assignment incentive under this subpart, an agency must establish an extended assignment incentive plan. This plan must include the following elements:

- (a) The designation of authorized agency officials who must review and approve the payment of extended assignment incentives;
- (b) The categories of employees which are prohibited from receiving an extended assignment incentive;
- (c) The criteria that must be met or considered in authorizing extended assignment incentives, including criteria for determining the size of an incentive;
- (d) The requirements governing service agreements, including the obligations of the agency and the employee when the service period is not completed;
- (e) The procedures for paying extended assignment incentives; and
- (f) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action.

§ 575.505 What criteria must an agency use to determine who will receive an extended assignment incentive?

(a) An agency must base the payment of an extended assignment incentive on a written determination that—

- (1) The eligible employee has completed at least 2 years of continuous service immediately before the commencement of the service agreement in one or more civil service positions located in a particular territory, possession, or commonwealth;
 - (2) It is in the best interest of the Government to encourage the employee to complete a specified additional period of employment with the agency in that location; and
 - (3) Replacing the employee with another employee possessing the required qualifications and experience would be difficult.
- (b) In determining whether it is in the best interest of the Government to retain an employee under paragraph (a)(2) of this section, an agency may consider how the employee's departure

would affect the agency's ability to operate effectively or to carry out an activity or perform a function which the agency deems essential to its mission.

(c) Any determination to approve an extended assignment incentive must be made on a case-by-case basis for each employee. However, an agency may consider common factors that apply to a category of employees, such as past recruitment and retention problems or the anticipation of such problems in the future.

§ 575.506 When is an agency prohibited from paying an extended assignment incentive?

(a) An extended assignment incentive may not be paid to the head of an agency, including an agency headed by a collegial body composed of two or more individual members.

(b) An agency may not begin paying an extended assignment incentive to an otherwise eligible employee who is receiving or fulfilling the requirements of a service agreement for the payment of a recruitment, relocation, or retention incentive. (See 5 CFR part 575, subparts A, B, and C.)

[68 FR 53669, Sept. 12, 2003, as amended at 70 FR 25752, May 13, 2005]

§ 575.507 What is the maximum extended assignment incentive that may be paid for a period of service?

(a) The total amount of extended assignment incentive payments that may be paid for a service period may not exceed the greater of—

- (1) An amount equal to 25 percent of the annual rate of basic pay of the employee at the beginning of the service period times the number of years (including fractions of a year) in the service period; or
- (2) \$15,000 per year (including fractions of a year) in the service period.

(b) For hourly rate employees who do not have a scheduled annual rate of basic pay, the annual rate in paragraph (a) of this section is computed by multiplying the applicable hourly rate in effect at the beginning of the service period by 2,087 hours.

(c) The number of years in the service period is computed by dividing the total number of calendar days in the service period (as established under

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§575.510(a)) by 365 and rounding the result to two decimal places. For example, a service period covering 39 bi-weekly pay periods equals 546 days, and 546 days divided by 365 days equals 1.50 years.

§575.508 What is the maximum amount of service that may be covered by an extended assignment incentive?

An employee's total service under one or more extended assignment incentive service agreements with a particular agency for service in a particular territory, possession, or commonwealth may not exceed 5 years. For this purpose, a year is equal to 365 days, resulting in a total service limit of 1,825 days.

§575.509 Is an extended assignment incentive considered basic pay for any purpose?

No, an extended assignment incentive is not considered part of an employee's rate of basic pay for any purpose, nor is it included for the purpose of calculating a lump-sum payment for annual leave under 5 CFR 550.1205.

§575.510 What requirements are associated with service agreements?

(a) Before paying an extended assignment incentive, the agency must require the employee to sign a written service agreement to complete a specified period of employment with the agency in a particular territory, possession, or commonwealth. The service period must meet the following conditions:

(1) The service period must begin on the first day of a pay period and end on the last day of a pay period; and

(2) The service period must not cause an employee to exceed the 5-year lifetime limitation described in §575.508.

(b) In addition to the service requirement in paragraph (a) of this section, the service agreement may specify other terms and conditions of employment applicable to the employee. For example, the service agreement may specify the employee's work schedule, type of position, and performance level. In addition, the service agreement may address the extent to which periods of time on a detail, in a nonpay status, or in a paid leave status are

creditable towards the completion of the service period.

(c) The service agreement must specify the method of payment of an extended assignment agreement. The agency may choose to pay an extended assignment incentive in an initial lump-sum payment at the beginning of the service period, in installments at the end of specified periods throughout the service period (biweekly, monthly, quarterly, etc.), in a lump-sum payment at the end of the entire service period, or through a combination of payment methods.

(d) The service agreement must include the conditions under which the employee would be required to repay an extended assignment incentive under §575.513.

(e) The service agreement must specify the conditions under which the payment of an extended assignment incentive may be terminated by the agency under §575.512.

(f) The service agreement must specify the conditions under which the agency may be obligated to pay an additional incentive payment for partially completed service, as provided in §575.513(d).

(g) The service agreement must specify the conditions under which the agency may impose a repayment penalty under §575.513(e) for an employee who fails to fulfill the terms of the service agreement.

(h) The service agreement must specify the conditions under which the agency may be obligated to pay an incentive payment attributable to some or all of the employee's *uncompleted* service for employees covered by §575.511 or §575.512.

§575.511 What happens when an employee is involuntarily separated or involuntarily reassigned prior to completion of the service period?

An employee who is involuntarily separated or is involuntarily reassigned to a position outside the particular territory, possession, or commonwealth involved is not indebted to the Federal Government for any extended assignment incentive payments he or she has received. The employee is entitled to keep all incentive payments received and, if applicable, is entitled

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to receive any additional amount representing the difference between the amount received and the prorated share of the total incentive attributable to completed service. The employee may receive a portion or all of the incentive payment attributable to uncompleted service only to the extent provided in the service agreement.

[68 FR 53669, Sept. 12, 2003; 68 FR 56665, Oct. 1, 2003]

§ 575.512 When may an agency terminate a service agreement?

(a) An agency may unilaterally terminate a service agreement based solely on the business needs of the agency. For example, an authorized agency official may terminate a service agreement when the employee's position is affected by a reduction in force or when there are insufficient funds to continue the planned incentive payments.

(b) If an agency terminates a service agreement under paragraph (a) of this section, the employee is entitled to keep all incentive payments received and, if applicable, is entitled to receive any additional amount representing the difference between the amount received and the prorated share of the total incentive attributable to completed service. The employee may receive a portion or all of the incentive payment attributable to uncompleted service only to the extent provided in the service agreement.

§ 575.513 What are the agency's and the employee's obligations when an employee fails to fulfill the terms of a service agreement?

(a) This section does not apply when an employee is involuntarily separated or involuntarily reassigned to a position outside the particular territory, possession, or commonwealth involved, as provided in § 575.511 or when an agency unilaterally terminates a service agreement under § 575.512.

(b) An employee is indebted to the Federal Government and must repay the paying agency for an appropriate portion of an extended assignment incentive received by the employee if—

(1) The employee fails to complete the period of employment required in his or her service agreement; or

(2) The employee violates any other condition specified in the service agreement that would trigger termination of the agreement.

(c)(1) If an employee does not fulfill the terms of a service agreement under the circumstances prescribed in paragraph (b) of this section and has received incentive payments whose value as a percentage of the planned total sum of incentive payments for the entire service period exceeds the percentage reflecting the portion of the service period completed by the employee, he or she must repay the excess payment and any additional repayment penalty imposed by the agency under paragraph (e) of this section.

(2) For example, consider an employee who signed a 364-day (26 pay period) service agreement and received the full amount of the extended assignment incentive as an initial lump-sum payment. If the employee voluntarily leaves after 20 pay periods (280 days), the employee will have received 100 percent of the total extended assignment incentive while completing only 76.9 percent (280/364) of the service period. The excess is 23.1 percent. Therefore, the employee must repay 23.1 percent (84/364) of the incentive. The employee is entitled to keep 76.9 percent of the incentive, unless the agency imposes an additional repayment penalty for failure to fulfill the service agreement under paragraph (e) of this section.

(d)(1) If an employee does not fulfill the terms of the service agreement under the circumstances prescribed in paragraph (b) of this section and has received incentive payments whose value as a percentage of the planned total sum of incentive payments for the entire service period is less than or equal to the percentage reflecting the portion of the service period completed by the employee, the employee has no repayment obligation unless the agency imposes an additional repayment penalty under paragraph (e) of this section. The agency may pay an additional incentive payment for some or all of the service completed by the employee if such additional payment is required by the service agreement. The total amount of incentive payments received by the employee may not exceed

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the prorated share of the planned incentive attributable to completed service.

(2) For example, consider an employee who signed a 364-day (26 pay period) service agreement to receive a total extended assignment payment of \$24,501 in two equal installment payments—*i.e.*, \$12,250.50 at the end of 13 pay periods of completed service and \$12,250.50 at the end of the required service period. If the employee voluntarily leaves after 20 pay periods (280 days), the employee will have received only 50 percent of the total extended assignment incentive while completing 76.9 percent (280/364) of the service agreement. The agency may pay the employee an additional amount of up to 26.9 percent of the incentive payment that is attributable to completed service, as allowed under the terms of the service agreement, assuming the agency does not impose an additional repayment penalty for failure to fulfill the service period under paragraph (e) of this section.

(e) An agency may impose an additional repayment penalty on an employee who does not fulfill the terms of a service agreement. This repayment penalty is in addition to any repayment required by paragraph (c) of this section. The specific terms and conditions governing the repayment penalty must be included in the service agreement. For example, an agency may adopt a schedule or formula that provides for varying penalty amounts based on the portion of the service period completed by the employee.

(f) If an employee fails to reimburse the paying agency for the full amount owed under this section, the amount outstanding must be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, or through the appropriate provisions for debt collection if the individual is no longer a Federal employee. However, the head of the agency may waive the debt under 5 U.S.C. 5584, if warranted.

[68 FR 53669, Sept. 12, 2003, as amended at 69 FR 33536, June 16, 2004]

EFFECTIVE DATE NOTE: At 72 FR 67841, Dec. 3, 2007, §575.513 was amended by revising

paragraph (b) introductory text; and paragraph (c)(1); removing the last sentence in paragraph (f); and adding a new paragraph (g), effective Jan. 2, 2008. For the convenience of the user, the added and revised text is set forth as follows:

§575.513 What are the agency's and the employee's obligations when an employee fails to fulfill the terms of a service agreement?

* * * * *

(b) Except as provided in paragraph (g) of this section, an employee is indebted to the Federal Government and must repay the paying agency for an appropriate portion of an extended assignment incentive received by the employee if—

* * * * *

(c)(1) If an employee does not fulfill the terms of a service agreement under the circumstances prescribed in paragraph (b) of this section and has received incentive payments whose value as a percentage of the planned total sum of incentive payments for the entire service period exceeds the percentage reflecting the portion of the service period completed by the employee, he or she must repay the excess payment and any additional repayment penalty imposed by the agency under paragraph (e) of this section, except when an authorized agency official waives the requirement to repay the excess amount under paragraph (g) of this section.

* * * * *

(g) If an employee received extended assignment incentive payments in excess of the amount that would be attributable to the completed portion of the service period under paragraph (c) of this section, an authorized agency official may waive the requirement to repay the excess amount when, in the judgment of the official, collection of the excess amount would be against equity and good conscience and not in the best interest of the United States.

§575.514 What are an agency's monitoring responsibilities?

Each agency must monitor the use of extended assignment incentives to ensure that the agency's extended assignment incentive plan and the payment of extended assignment incentives are consistent with the requirements and criteria established under 5 U.S.C. 5757 and this subpart.

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§ 575.515 What records and reports are required?

(a) Each agency must keep a record of each determination required by this subpart and make such records available for review upon OPM's request.

(b) Each agency must provide any information requested by OPM for its report to Congress, as required by 5 U.S.C. 5757(d). Before February 15, 2006, each agency must submit a written report to OPM on—

(1) The agency's use of extended assignment incentives by providing the data required in paragraph (c) of this section;

(2) Whether the use of extended assignment incentives influenced employees to stay longer than their initial tour of duty at their current duty stations; and

(3) The agency's recommendations for changes necessary to improve the effectiveness of extended assignment incentives.

(c) Each agency report must contain the following data for the period from May 2, 2003, to December 31, 2005:

(1) The number of extended assignment service agreements that commenced in each fiscal year;

(2) The dollar amount expended on extended assignment incentives in each fiscal year;

(3) The number of employees who declined an extended assignment incentive, by occupational series and geographic location;

(4) The number of employees who signed an extended assignment incentive service agreement, the total amount of the planned incentives, and the total number of years of agreed-upon service, by occupational series and geographic location;

(5) The number of employees whose service agreements were terminated before completion of the agreed-upon service period, with subcounts showing the number covered by § 575.511, § 575.512, and § 575.513, respectively.

(6) The number of employees who incurred a repayment debt under § 575.513 (including any repayment penalty under § 575.513(e)) and the total amount of repayment debt incurred; and

(7) The portion of the repayment debt that, as of December 31, 2005—

(i) Has been recovered;

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(ii) Is subject to ongoing collection efforts; and

(iii) Has been waived or written off.

PART 576—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

Subpart A—Voluntary Separation Incentive Payments

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576.203 Waivers of the Voluntary Separation Incentive Repayment requirement.

AUTHORITY: Sections 3521, 3522, 3523, 3524, and 3535 of title 5, United States Code.

SOURCE: 70 FR 3859, Jan. 27, 2005, unless otherwise noted.

Subpart A—Voluntary Separation Incentive Payments

§ 576.101 Definitions.

In this part:

Employee, as defined in 5 U.S.C. 3521, means an employee as defined under 5 U.S.C. 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

(1) Is serving under an appointment without time limitation; and

(2) Has been currently employed for a continuous period of at least 3 years.

Specific designee means a senior officer or official within an agency who has been specifically designated to sign requests for authority to offer Voluntary Separation Incentive Payments for, or in place of, the head of the agency. Examples include the Chief Human Capital Officer, the Assistant Secretary for Administration, the Director of Human Resources Management, or a deputy of one of these persons.